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THE FIFTEENTH YEAR OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE*

By Manley O. Hudson

The fifteenth year of the Permanent Court of International Justice has been notable for several reasons. Because of the entry into force on February 1, 1936, of the amendments to the Statute annexed to the Protocol of September 14, 1929, it marks the beginning of a new period in the history of the Court. A consequence of the amendments was the adoption of new Rules of Court on March 11, 1936, and some modifications were made in the Court's practice. The year also saw several changes in the Court's personnel; one judge died, one resigned, and three new judges were elected. Moreover, the action of various governments during the year with reference to the Court protocols is to be noted as significant for the future of the Court.

Under the amended Statute, the Court no longer holds sessions; instead it has a judicial year. During the judicial year 1936, the judges were occupied at The Hague from February 1 to March 17, from April 28 to May 19, from June 3 to June 25, and from October 26 to December 16; a total of 143 days. This compares with 107 days in 1935, 120 days in 1934, 178 days in 1933, and 240 days in 1932.

Two cases were heard by the Court in 1936, and one of them passed to judgment. In the Pajzs, Csáky, Esterházy Case (Hungary *v.* Yugoslavia), in which an order was made on May 23, 1936, judgment was given on December 16, 1936; the Losinger & Co. Case (Switzerland *v.* Yugoslavia), in which an order was made on June 27, 1936, was later withdrawn by the parties. At the end of the year, three cases were pending on the docket of the Court: a case relating to Phosphates in Morocco (Italy *v.* France); a case relating to the Water of the Meuse (Netherlands *v.* Belgium); and a case relating to Lighthouses in Crete and Samos (France and Greece).

AMENDMENTS TO THE STATUTE

The circumstances under which various amendments to the Statute came into force on February 1, 1936, have been related in a previous number of this Journal.[1] It is to be noted, however, that on March 17, 1936 the Brazilian Minister for Foreign Affairs addressed a letter to the Secretary-General of the League of Nations,[2] making certain observations which,

* This is the fifteenth in the series of annual articles, the publication of which was begun in this Journal, Vol. 17 (1923), p. 15.

[1] See Hudson, "Amendment of the Statute of the Permanent Court of International Justice," this Journal, Vol. 30 (1936), p. 273. For the English version of the Statute as amended, see this Journal, Supplement, Vol. 30 (1936), pp. 115–128.

[2] For the text, see Publications of the Court, Series E, No. 12, p. 60, note.

though not "a protest against the decision reached by the Council," were thought to be "necessary to safeguard the legal principle that an international instrument fully in force should not be modified without the previous and express agreement of all the contracting parties, unanimity being an essential condition in that connection"; the Brazilian Government felt itself impelled "not to approve by its silence" a precedent which might be "very disadvantageous in the future." [3] Later in the year it was announced that the President of Brazil had sanctioned approval of the Revision Protocol.

The amendments effected modifications in the text of eighteen articles of the Statute, and the addition of four new articles. Some of the principal changes made are the following:

(1) Provision is made for possible participation in the election of judges by states which, though not members of the League of Nations, have "accepted the Statute of the Court."

(2) The office of deputy-judge is abolished, and the four deputy-judges elected in 1930 have ceased to be "members" of the Court.[4]

(3) The procedure by which members of the Court may resign has been regularized.

(4) A new procedure is laid down for the filling of vacancies.

(5) Judges are now forbidden to "engage in any other occupation of a professional nature."

(6) In lieu of the annual and extraordinary sessions previously held, the Court is to be "permanently in session except during the judicial vacations."

(7) The Chamber for Summary Procedure now has five members instead of three, and *ad hoc* national judges may sit in any of the three chambers of the Court.

(8) New provision is made for contributions to the expenses of the Court by states not members of the League of Nations which may be parties in cases before the Court.

(9) A new chapter of the Statute codifies the Court's practice with reference to advisory opinions, and to some extent it places changes in this practice beyond the power of the Court.

Since February 1, 1936, certain of the articles of the Statute annexed to the Protocol of Signature of 1920 are replaced by the amended texts annexed to the Protocol of 1929. Hence any future "acceptance of the Statute" must be an acceptance of the amended Statute. It is expressly provided in paragraph 6 of the Revision Protocol: "After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute

[3] The situation with reference to the amendments to the Statute of the Court was not unlike that which existed for several years with reference to the Rome Protocol of April 21, 1926 (see 3 Hudson, International Legislation, p. 1857) on the amendment of the Convention of June 7, 1905, concerning the creation of the International Institute of Agriculture; amendments to the latter convention seem to have been put into force some time before the United States adhered to the 1926 Protocol. See Congressional Record, 1934, p. 7768; U. S. Treaty Series, No. 903.

[4] One of the former deputy-judges, M. Josef Redlich, died on November 11, 1936.

an acceptance of the Statute as amended." This seems to have been interpreted by the Secretary-General of the League of Nations in the sense that since February 1, 1936, the Revision Protocol "has ceased to be open for signature." [5] On this view, since February 1, 1936, any state which ratifies or which signs and ratifies the 1920 Protocol of Signature, must understand that the annexed Statute having been amended, its action must apply to the amended Statute to be effective.[6]

THE NEW RULES OF COURT

The entry into force of the amendments to the Statute obliged the Court to make some changes in its Rules. Ever since the adoption of the 1931 Rules, their revision had been contemplated, and on April 10, 1935, "a complete new text of the Rules" under the original Statute was adopted in first reading.[7] In February, 1936, the Court combined with a second reading of the pending drafts the task of bringing the Rules into conformity with the amended Statute. On March 11, 1936, new Rules were promulgated, and as from that date "the Rules adopted on March 24, 1922, as revised on July 31, 1926, and amended on September 7, 1927, and February 21, 1931" were repealed.[8] The new Rules "purport (1) to complete the old Rules by embodying in them for the information of litigants the precepts evolved in practice since 1926; (2) to present the whole body of Rules in a more logical order; (3) to bring them into conformity with the letter and spirit of the revised Statute, and of the concomitant Assembly resolutions." [9] The scheme and arrangement of the Rules have been greatly modified, and 86 articles now replace the previous 75 articles.[10]

Inevitably the discussion of the Rules of the Court involved some reconsideration of its practice not covered by the Rules. On February 20, 1931, the Court had adopted a resolution which formulated a part of its judicial practice while acting in *chambre de conseil;*[11] on March 17, 1936, this resolution was amended to read as follows: [12]

> 1. After the termination of the written proceedings and before the beginning of the hearing, the judges meet in private to exchange views with regard to the elements of the written proceedings and to bring out any points in regard to which it may be necessary to call for supplementary verbal explanations.
>
> 2. After the hearing, a period of time proportionate to the nature of

[5] League of Nations Document, A. 6 (a).1936, Annex I, (V), p. 69.

[6] On July 7, 1936, Bolivia deposited a ratification of the 1920 Protocol, which had been signed on its behalf prior to Feb. 1, 1936.

[7] Series E, No. 12, p. 63.

[8] English and French versions of the new Rules were promptly published in Series D, No. 1 (3rd edition); the English version is reproduced in this JOURNAL, Supplement, Vol. 30 (1936), pp. 128–153.

[9] Series E, No. 12, pp. 63–64.

[10] For a detailed analysis of the 1936 Rules, see Hudson, "The 1936 Rules of the Permanent Court of International Justice," this JOURNAL, Vol. 30 (1936), p. 463.

[11] Series D, No. 2 (2nd Add.), p. 300.

[12] Series E, No. 12, p. 196.

the case is allowed to judges in order that they may study the oral arguments of the parties.

3. At the expiration of this time, a deliberation is held, under the direction of the President, for the purpose of collectively examining the case as it presents itself after the hearing, bringing out the questions to be solved and discussing them severally. The President ensures that all questions called to notice either by himself or by the judges have been discussed and that each judge has made known his impressions in regard to them.

4. At a suitable interval of time after this deliberation, each judge expresses his personal view in writing in the form of a note, without committing himself to a definite opinion.

5. On the basis of the notes of each judge, the President prepares and submits to the Court for consideration a plan of discussion provisionally determining the order and terms of the questions on which the Court must give its opinion.

The adoption of this plan affects neither the right of judges, at any stage in the deliberation, to call upon the Court to express its opinion upon any question or in any form which they may consider desirable, nor the freedom of the Court itself subsequently to modify as it may see fit the order of its discussion and the terms of the questions.

6. At a subsequent and final deliberation, each question is discussed, put to the vote by the President and decided.

7. On the basis of the votes cast by the majority of judges at the final deliberation, the preparation of a draft decision is entrusted to a committee consisting of the President and of two judges chosen by the Court by secret ballot and by an absolute majority of votes.

8. A preliminary draft of the decision is circulated to the judges, who may submit amendments in writing. When these amendments have been received, the committee submits a draft decision for discussion by the Court.

Judges who wish to deliver a separate or dissenting opinion shall hand in the text thereof after the adoption of the draft decision in first reading and before the draft of the decision as prepared for second reading has been circulated.

On March 17, 1936, the Court expressed an opinion changing its practice in an important respect, to the effect that "a judge who was not present at the public sitting held for the delivery of a decision could not have appended to that decision a statement to the effect that he had been present throughout or during part of the deliberation and possibly mentioning what his opinion on the case was." [13]

ACTION BY STATES WITH REFERENCE TO THE COURT

The number of parties to the Protocol of Signature of December 16, 1920, to which the Court's Statute is annexed, continues to grow year by year. On July 7, 1936, Bolivia's ratification of this protocol was deposited at Geneva, thus bringing the number of parties to fifty. The protocol was

[13] Series E, No. 12, p. 197. For comment on the previous practice, see this JOURNAL, Vol. 28 (1934), p. 14.

signed on behalf of Turkey on March 12, 1936, but this signature has not yet been followed by a deposit of Turkey's ratification.

The Protocol of September 14, 1929 concerning the accession of the United States was signed on behalf of Turkey on March 12, 1936.

Some progress was made during the year 1936 with reference to the extension of the obligatory jurisdiction of the Court. Earlier declarations of a number of states, made under the second paragraph of Article 36 of the Statute, expired during the year, and in each case except that of Italy a declaration was made renewing the acceptance of obligatory jurisdiction. In the following list of renewals, ratification of the declaration was either not reserved, or, if reserved, it was effected during the year:[14]

France (April 11, 1936), for five years from April 25, 1936.
Sweden (April 18, 1936), for ten years from August 16, 1936.
Norway (May 29, 1936), for ten years from October 3, 1936.
Rumania (June 4, 1936), for five years from June 9, 1936.
Netherlands (August 5, 1936), for ten years from August 6, 1936.

Declarations of renewal made by Denmark on June 4, 1936, and by Switzerland on September 23, 1936, both for periods of ten years, were subject to ratification, and ratifications were not deposited before the end of the year.

Two new declarations recognizing the Court's obligatory jurisdiction were made during 1936. On March 12, 1936, the delegate of Turkey made the following declaration[15] to become operative on the deposit of Turkey's ratification of the Protocol of Signature of 1920:

> [Translation] On behalf of the Turkish Republic, I recognize as compulsory, *ipso facto* and without special agreement, in relation to any member of the League of Nations or state accepting the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court, for a period of five years, in any of the disputes enumerated in the said article arising after the signature of the present declaration, with the exception of disputes relating directly or indirectly to the application of treaties or conventions concluded by Turkey and providing for another method of peaceful settlement.

On July 7, 1936, the following declaration was made by the permanent delegate of Bolivia, and Bolivia's ratification was deposited on the same date:[16]

> [Translation] On behalf of the Republic of Bolivia and duly authorized, I recognize as compulsory *ipso facto* and without special agreement, in relation to any other member or state accepting the same obligation—that is to say, on condition of reciprocity—the jurisdiction of the Permanent Court of International Justice, purely and simply, for a period of ten years.

[14] See 164 League of Nations Treaty Series, p. 353.
[15] *Ibid.*, p. 352.
[16] League of Nations Official Journal, 1936, p. 911.

On December 31, 1936, declarations made under paragraph 2 of Article 36 of the Statute were in force for 37 states or members of the League of Nations.

On August 27, 1936, the Secretary-General of the League of Nations informed interested governments that the Colombian Government had expressed a desire to correct an error in its declaration made on January 6, 1932, and had therefore proposed to add to the previous declaration the following:

> In accordance with Article 2 of Law No. 38 of 1930, authorizing the President of the Republic to accept the compulsory jurisdiction of the Court as provided in Article 36 of its Statute, this declaration is made with a reservation concerning disputes prior to January 6, 1932, the date on which it was signed. (C.L.153.1936.V.)

Certain states have already agreed to this addition.

As in previous years, a number of international instruments conferring jurisdiction on the Court were brought into force during 1936. One of the most significant of these was the Protocol of March 27, 1931, conferring upon the Court jurisdiction to deal with differences concerning the interpretation of conventions drawn up by the Hague Conferences on Private International Law; [17] this protocol entered into force between Belgium and the Netherlands on April 12, 1936, and between these states and Estonia on July 26, 1936.

THE FILLING OF VACANCIES IN THE COURT

At no time during the year did the Court have its full complement of judges. Judge Schücking's death on August 25, 1935, and Judge Kellogg's resignation on September 9, 1935, created two vacancies which were not filled until October 8, 1936. A third vacancy caused by the resignation of Judge Wang on January 15, 1936, was also filled on October 8, 1936. A fourth vacancy created by the death of Judge Rolin-Jaequemyns on July 11, 1936, was not filled during the year. For almost three months, therefore, the Court had only eleven of the possible fifteen judges, and for eight months it had no more than twelve; only eleven regular judges took part in the order given by the Court in the Losinger & Co. Case on June 27, 1936.

Invitations to national groups to make nominations for the Schücking and Kellogg vacancies were despatched by the Secretary-General in October, 1935. For these vacancies thirty-six candidates were eventually nominated by forty-eight national groups; 39 national groups nominated Manley O. Hudson (U. S. A.), 22 nominated Å. Hammarskjöld (Sweden), and 10 nominated Victor Bruns (Germany).[18]

Invitations to nominate for the Wang vacancy were despatched on May 23, 1936. For this vacancy nineteen candidates were nominated by forty

[17] For the text, see 5 Hudson, International Legislation, p. 933. For a list of the Hague Conventions on Private International Law to which the protocol applies, see Series E, No. 12, pp. 360–364.

[18] League of Nations Document, A.8.(1).1936.V.

national groups; 29 national groups nominated Cheng Tien-Hsi (F. T. Cheng, China), 9 nominated Å. Hammarskjöld (Sweden), and 5 nominated Munir Ertekin (Turkey).[19]

Invitations to nominate for the Rolin-Jaequemyns vacancy were despatched on July 27, 1936. A report made on November 27, 1936, indicated that 25 national groups had nominated Charles de Visscher (Belgium) for this vacancy.[20]

Numerous questions arose in connection with the two elections held in 1936. First, a question as to the date of the election to fill the Kellogg and Schücking vacancies. On September 28, 1935, the Council of the League of Nations had adopted a report which proposed that the election should be "included in the agenda of the first session of the Assembly which took place after the end of the period of three months" which had to be allowed for the nominations;[21] the invitation to the national groups therefore called for nominations to be made by January 20, 1936. When in June, 1936, it had been decided to hold an adjourned meeting of the Sixteenth Session of the Assembly, the Secretary-General sent a telegram reminding members of the Council of the contents of the report adopted on September 28, 1935; to this the Italian Government replied with a suggestion that, as the contemplated meeting of the Assembly was not a new session and as no decision had been taken concerning the participation of non-member states under the amended Statute, the election should not be held at the meeting then in contemplation.[22] On June 26, 1936, the Council decided to postpone this election to the ordinary session of the Assembly in September,[23] and this decision was confirmed by the Assembly on July 3, 1936.[24]

The Wang vacancy having arisen after nominations had been made for filling the Kellogg and Schücking vacancies, on May 11, 1936, the Council appointed a committee of jurists to report on the measures which it necessitated.[25] In its report of May 13, 1936, this committee proposed that national groups, including those of non-member states which though not mentioned in the Annex to the Covenant had previously been members of the League of Nations, should be invited to make nominations for this vacancy.[26] It was explained that this proposal was "not contrary to the decision taken by the Assembly in 1929"; on that occasion, two vacancies (caused by the death of M. Weiss and of Lord Finlay) having occurred at separate times, separate invitations to nominate with respect to them were addressed to the national groups, and separate lists of candidates were submitted to the Tenth Assembly, but a decision was taken that the two vacancies were to be filled simultaneously and that candidates nominated for one should be eligible for either vacancy.[27] On July 11, 1936, the committee of jurists made a second

[19] League of Nations Document, A.21(1).1936.V.
[20] *Idem*, C.501.M.314.1936.V.
[21] League of Nations Official Journal, 1935, p. 1203.
[22] *Idem*, 1936, p. 783.
[23] *Idem*, 1936, p. 756.
[24] *Idem*, Special Supplement No. 151, p. 53.
[25] *Idem*, 1936, p. 539.
[26] *Idem*, 1936, p. 556.
[27] See Hudson, Permanent Court of International Justice, p. 244.

report,[28] suggesting that two separate elections should be held, one to fill the Kellogg and Schücking vacancies at which only those candidates would be eligible who had been nominated for these vacancies, and another to fill the Wang vacancy at which only those candidates would be eligible who had been nominated for this vacancy. A decision favoring this proposal was taken by the Council on September 25, 1936.[29] When the question was considered by the First Committee of the Seventeenth Assembly, "many delegations maintained that it would be more in conformity with the spirit of the Court's Statute for all three seats to be filled at a single election"; but by sixteen votes to ten the First Committee reported in favor of the adoption of the Council's proposal,[30] and on October 3, 1936, the proposal was adopted by the Assembly.

Another question referred to the committee of jurists set up on May 11, 1936, related to the application of paragraph 3 of Article 4 of the Statute of the Court, as in force from February 1, 1936. This paragraph reads as follows:

> The conditions under which a state which has accepted the Statute of the Court but is not a member of the League of Nations, may participate in electing the members of the Court shall in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.

This raised a question as to the terms on which three states—Brazil, Germany and Japan—might participate in the elections of 1936. In its first report the committee of jurists refrained from expressing an opinion on this question, desiring "that the states in question should have an opportunity of informing it of their point of view."

In a note of June 24, 1936, Brazil asked to be admitted "to participate in the election of the judges, not merely in the Assembly, but also in the Council."[31] In a note of June 29, 1936, Japan expressed the view that "it would be appropriate that the judges should be elected by an *ad hoc* electoral body not forming part of the League of Nations," and that "it would be desirable that the Statute should be amended in this sense"; but "under present conditions" Japan sought a position not "inferior either to that which the signatories of the Court's Statute contemplated conferring on a certain non-member state"—the reference is obviously to the Protocol of September 14, 1929, concerning the accession of the United States—"or to the most favorable treatment" accorded to any other non-member state.[32] No view was expressed by the German Government.

On July 11, 1936, the committee of jurists recommended that the Council propose that the Assembly adopt the following rules to govern this situation:[33]

[28] League of Nations Document, C.293.M.178.1936.V.
[29] *Idem*, C. 93rd Session, P.V. 3 (1).
[30] League of Nations Document, A.49.1936.V.
[31] *Idem*, A.42.1936.V. [32] *Ibid.* [33] *Ibid.*

1. If a state which is not a member of the League but is a party to the Statute of the Court notifies the Secretary-General of its desire to participate in an election of members of the Court, such state shall *ipso facto* be admitted to vote in the Assembly.

2. If the state indicates that it wishes also to vote in the Council, the Assembly, by a two-thirds majority, shall decide whether at the election in question the state shall also be admitted to vote in the Council.

3. The Secretary-General shall for each election take the necessary measures to allow states which, though parties to the Statute of the Court, are not members of the League of Nations, to give sufficiently early notification of their desire to participate and be able to participate in the election.

When this suggestion came before the Council, it was reported that "it would, at the present moment, be difficult to secure agreement as to the final settlement of the question of a vote in the Council." In its resolution of September 25, 1936, the Council therefore proposed, "as a provisional measure and without prejudging any question of principle, that at any election of members of the Court which may take place before January 1, 1940," Germany, Brazil and Japan should if they desired be admitted to vote in the Council as well as in the Assembly.[34] This solution was accepted by the First Committee of the Assembly, and on October 3, 1936, the Assembly adopted the following decision:[35]

(1) If a state which is not a member of the League but is a party to the Statute of the Court notifies the Secretary-General of its desire to participate in the election of members of the Court, such state shall *ipso facto* be admitted to vote in the Assembly.

(2) At any election of members of the Court which may take place before January 1, 1940, Germany, Brazil and Japan, being states which are not members of the League but are parties to the Statute of the Court, if they notify their desire to do so to the Secretary-General, shall, as a provisional measure and without prejudging any question of principle, also be admitted to vote in the Council.

(3) The Secretary-General is instructed to take the necessary measures to allow states which, though parties to the Statute of the Court, are not members of the League of Nations to participate in the elections.

In the two elections which were held on October 8, 1936, representatives of both Brazil and Japan participated. In the election to fill the Kellogg and Schücking vacancies, 53 valid votes were cast in the Assembly, of which Mr. Manley O. Hudson received 48 votes and Mr. Å. Hammarskjöld received 38 votes; these candidates received a majority of the votes on the first ballot in the Council, also, and they were therefore declared by the President of the Assembly to have been elected.[36] After a brief interval, a second election was held to fill the Wang vacancy. On the first ballot in the Assembly, Mr. Cheng Tien-Hsi received 31 of the 53 votes cast; but on the first ballot in the

[34] League of Nations Document, A.42.1936.V.

[35] *Idem*, A.49.1936.V.

[36] Journal of the Seventeenth Assembly, No. 17, p. 182.

Council, M. Munir Ertekin received a majority of the votes. On a second ballot in the Assembly, Mr. Cheng Tien-Hsi received 30 of the 50 valid votes cast, and as he had also received a majority of the votes on the second ballot in the Council, he was declared to have been elected.[37] All three of the successful candidates accepted their election.

On September 25, 1936, the Council decided that the election of a successor to Baron Rolin-Jaequemyns should be held "during the Assembly's ordinary session of 1937, unless there shall be an earlier meeting of the Assembly at which it can take place and the Council decides to place the election on the agenda of that meeting." [38]

THE PAJZS, CSÁKY, ESTERHÁZY CASE

By an application filed with the Court's Registry on December 6, 1935, the Government of Hungary instituted proceedings against the Government of Yugoslavia in regard to three judgments rendered by the Hungarian-Yugoslav Mixed Arbitral Tribunal on July 22, 1935, in the cases of Pajzs (No. 749), Csáky (No. 750), and Esterházy (No. 747). These proceedings constituted, in the first place, an appeal under Article X of Agreement No. II signed at Paris on April 28, 1930, and in the second place an alternative submission of a "difference as to the interpretation or application" of Agreement No. II and Agreement No. III, both signed at Paris on April 28, 1930, under Article XVII of Agreement No. II and Article 22 of Agreement No. III. Alternatively, also, the Hungarian Government relied upon declarations made by Hungary and Yugoslavia recognizing the obligatory jurisdiction of the Court under Article 36, paragraph 2, of the Court's Statute; but the Yugoslav declaration having expired on November 24, 1935, some days before the filing of the Hungarian application, this ground of the Court's jurisdiction was later abandoned.

Soon after the termination of the World War, Czechoslovakia, Rumania and Yugoslavia undertook extensive measures of agrarian reform. Certain Hungarian nationals whose landed estates were affected by these measures instituted proceedings before the Mixed Arbitral Tribunals set up by each of these states and Hungary, basing their claims on Article 250 of the Treaty of Trianon of June 4, 1920. Decisions by the Mixed Arbitral Tribunals upholding their jurisdiction led to difficulties which for some time thwarted the work of the tribunals and which gave rise to protracted discussions before the Council of the League of Nations. When the whole problem of reparations was under discussion at The Hague in 1929 and 1930, an effort was made to find escape from these difficulties by impersonalizing certain claims relating to the agrarian reforms, and by creating an autonomous legal personality known as the Agrarian Fund upon which the responsibility for these claims would fall. Drafts of agreements to this end, adopted at

[37] Journal of the Seventeenth Assembly, No. 17, p. 183.
[38] League of Nations Document, C. 93rd Session, P.V. 3 (1).

The Hague on January 20, 1930, were completed in a later conference held at Paris. On April 28, 1930, four agreements were signed at Paris, together with a covering preamble:[39] Agreement No. I effected certain "arrangements between Hungary and the Creditor Powers" with respect to reparations; Agreement No. II dealt with certain questions relating to the agrarian reforms of Czechoslovakia, Rumania and Yugoslavia, and with the continued functioning of the Mixed Arbitral Tribunals; Agreement No. III dealt with "the organization and working of an Agrarian Fund entitled 'Fund A'"; and Agreement No. IV, to which a limited number of governments (not including Hungary) were signatories, dealt with the "constitution of a special fund entitled 'Fund B.'" These agreements entered into force on April 9, 1931. It was not until June 26, 1931, that the definitive agrarian law of Yugoslavia was promulgated.

In December 1931, Pajzs, Csáky and Esterházy instituted proceedings before the Hungarian-Yugoslav Mixed Arbitral Tribunal against the Agrarian Fund, seeking indemnities for the expropriation of their properties. On April 21, 1933, the tribunal gave judgments to the effect that the applications were barred by lapse of time. During the following six months, Pajzs, Csáky and Esterházy instituted proceedings before the same tribunal against Yugoslavia, seeking indemnities—as two of the applicants put it, the indemnities to which they would have been entitled if they had possessed Yugoslav nationality—on the basis of Article 250 of the Treaty of Trianon. Under Article 11 of the Yugoslav Law of June 26, 1931, local, *i.e.* national, indemnities had been denied to them. In this second series of proceedings, the tribunal gave judgments on July 22, 1935, holding that the applications were not receivable, the Paris Agreements having covered all proceedings by Hungarian nationals in regard to the agrarian reform in such a way that they might no longer be based upon Article 250 of the Treaty of Trianon. Thereafter, an unsuccessful attempt was made by diplomatic correspondence to reach a settlement of some of the problems which arose.

Hungary was represented in this case by M. Gajzágó as agent, and Yugoslavia by M. Stoykovitch as agent. As the Court included no judge of the nationality of either party, Hungary appointed as judge *ad hoc* M. de Tomcsanyi, and Yugoslavia, M. Zoricić.

The Yugoslav agent put forward preliminary objections to the Court's jurisdiction to entertain the appeal, and alternatively to the Court's jurisdiction to deal with the difference as to the interpretation or application of Agreements Nos. II and III. On April 29 and 30, and May 1, 4, 5, and 6, 1936, the Court heard the oral observations of the two agents on these objections, and on May 23, 1936, it gave an order joining these objections to the merits, to the end that it might "adjudicate upon these objections and, if need be, upon the merits in one and the same judgment."[40]

[39] For the texts, see 121 League of Nations Treaty Series, p. 69 ff., 5 Hudson, International Legislation, p. 422 ff.

[40] Series A/B, No. 66.

After the completion of the written proceedings, the Court heard the agents' oral arguments on the merits, at public sittings held from October 26 to November 13, 1936. In the course of these oral proceedings, the submissions of the parties were modified and restated. On December 16, 1936, the Court gave judgment, by eight votes to six, holding that as the proceedings before the Mixed Arbitral Tribunal fell within the exception in Article X of Agreement No. II, the appeal was not receivable; with reference to the alternative submissions concerning the "difference as to the interpretation or application" of Agreements Nos. II and III, it was held that the "attitude" adopted by Yugoslavia was in conformity with the dispositions of the Paris agreements.[41] Article X of Agreement No. II, on which the appeal was based, provides, in the English version, as follows:

> Czechoslovakia, Yugoslavia and Rumania, of the one part, and Hungary, of the other part, agree to recognize, without any special agreement, a right of appeal to the Permanent Court of International Justice from all judgments on questions of jurisdiction or merits which may be given henceforth by the Mixed Arbitral Tribunals in all proceedings other than those referred to in Article I of the present agreement.

It was the view of the majority of the Court that the proceedings before the Mixed Arbitral Tribunal in the three cases to which the appeal related were not "proceedings other than those referred to in Article I" of Agreement No. II; and hence that under Article X jurisdiction had not been conferred on the Court to entertain the appeal. In dealing with the difference as to interpretation or application, a majority of the Court "reached the conclusion that these agreements [of Paris] were framed with the object of finally settling all claims which might result from the agrarian reforms in the states of the Little Entente."

Separate opinions were given by five dissenting judges, MM. Anzilotti, Nagaoka, Hudson, Hammarskjöld, and de Tomcsanyi; Jonkheer van Eysinga also dissented.

THE LOSINGER & CO. CASE

By an application filed with the Court's Registry on November 23, 1935, the Swiss Confederation instituted proceedings against the Kingdom of Yugoslavia, asking the Court to give judgment that the Yugoslav Government could not claim release from the terms of an arbitration clause in a contract between it and the Swiss *Société Anonyme Losinger & Cie.*, by adducing legislation subsequent in date to that contract. The basis of jurisdiction relied upon was the declarations of the two states made under paragraph 2 of Article 36 of the Statute; the Yugoslav declaration expired on November 24, 1935. A preliminary objection was filed by Yugoslavia asking the Court to declare that it had no jurisdiction over the dispute under Article 36 of the Statute, or alternatively to declare that the application

[41] Series A/B, No. 69.

could not be entertained because Losinger & Co. had not exhausted the means of obtaining redress placed at its disposal by Yugoslav municipal law.

Each of the parties appointed a judge *ad hoc:* M. Huber was appointed by Switzerland and M. Zoricić by Yugoslavia. At the public hearings held on June 4, 5, 8, 9, 1936, M. Stoykovitch appeared as agent of the Yugoslav Government, and M. Sauser-Hall as agent of the Swiss Government. On June 27, 1936, the Court, with two judges dissenting, gave an order joining the objection to the merits, and fixing the time-limits for the filing of documents on the merits.[42]

The Swiss agent attacked the validity of the document submitting the objection, on the ground that it was not filed in conformity with the Rules of Court. In support of this claim, it was said that as only one copy of the document had been filed within the prescribed time-limit, the fifty copies being filed after the expiry of the time-limit, Article 40 of the 1936 Rules had not been complied with. On this point the Court said that the question raised was "one that concerns the organization and internal administration of the Court, rather than the rights of the parties," and that the words "document of the written proceedings" as used in Article 40 "do not cover documents instituting proceedings," to which documents submitting preliminary objections are assimilated. It was contended, also, that the preliminary objection was not filed within the time-limit originally prescribed for the filing of the counter-memorial, but only within the time-limit as fixed after two extensions, and that this was in conflict with the spirit of Article 38 of the 1931 Rules and Article 62 of the 1936 Rules. In reply on this point, the Court said that "a time-limit which has been extended is, in principle, for all purposes the same time-limit" as that originally fixed.

As to the plea to the jurisdiction, the Court thought that if it proceeded to adjudicate on this plea, it "might be in danger . . . of passing upon questions which appertain to the merits of the case, or of prejudging their solution"; hence this objection was joined to the merits to the end that the Court might give decision upon it, and, if need be, on the merits in one and the same judgment. The objection to the admissibility of the application fell to be treated in the same way.

Before the expiration of the date fixed for the filing of the Swiss Government's reply, the time-limit having been extended at the request of the Swiss agent, the Court was informed by both agents that the two governments had reached an agreement to discontinue the proceedings. On December 14, 1936, the Court issued an order by which it placed on record the agents' communications and directed the case to be removed from the list of cases before the Court.[43]

CLAIMS TO WORK DEPOSITS OF PHOSPHATES IN MOROCCO

On March 30, 1936, an application was submitted to the Court by the agent of the Italian Government, M. Raffaele Montagna, initiating proceed-

[42] Series A/B, No. 67.

[43] *Ibid.*, No. 68.

ings against the Government of France, as such and as the protector of Morocco, and asking the Court to adjudge that the monopolization of the Moroccan phosphates accomplished by stages between 1920 and 1934 for the benefit of French interests, is inconsistent with the international obligations of Morocco and France and must therefore be annulled; alternatively, to adjudge that a decision of the Morocco Mines Department of January 8, 1925, and the consequent denial of justice are inconsistent with the international obligations of Morocco and France to respect rights acquired by an Italian company, and that the company should be recognized as discoverer and tenders should be invited for working the deposits covered by its licenses; and alternatively that fair compensation should be paid for the expropriation and for expenses incurred by the company in defense of its rights. To establish the jurisdiction of the Court, the application relied upon "the declarations made by Italy and France when acceding to the Optional Clause of Article 36, paragraph 2, of the Statute" of the Court.

On July 6, 1936, the French Government designated M. Basdevant as its agent in this case. Meanwhile, on June 18, 1936, the Court had adopted an order fixing the dates for the filing of the memorial and counter-memorial, the date for the filing of the latter being subsequently extended. On December 16, 1936, the respondent state put forward a series of preliminary objections to the jurisdiction of the Court.

DIVERSION OF WATER FROM THE RIVER MEUSE

On August 1, 1936, an application was submitted to the Court by the agent of the Netherlands Government, Mr. B. M. Telders, asking the Court to adjudge that certain diversions of water from the River Meuse, effected or intended to be effected by Belgium in connection with the completion of the Albert Canal, are or would be contrary to the Treaty of May 12, 1863, between Belgium and the Netherlands; [44] and to enjoin upon Belgium to discontinue the construction of certain works and any supplying of water found to be contrary to the said treaty. The application invokes as the basis of the Court's jurisdiction "the declarations whereby the Netherlands and Belgium acceded to the Protocol containing the Optional Clause concerning the acceptance of the compulsory jurisdiction of the Court."

The Belgian Government has designated M. de Ruelle as its agent in this case, and it has named Professor Charles de Visscher as judge *ad hoc*. The written proceedings are to be concluded by April 12, 1937.

LIGHTHOUSES IN CRETE AND SAMOS

On March 17, 1934, the Court gave a judgment in a case between France and Greece relating to a dispute between a French firm and the Greek Government concerning the validity as against Greece of a contract for the re-

[44] The text of the Treaty of 1863 is reproduced in 1 Martens, *Nouveau Recueil Général* (2d Series), p. 117.

newal of a lighthouse concession, entered into by the French firm and the Ottoman Empire on April 1/14, 1913.[45] The Court upheld the validity of the contract, but under the special agreement conferring jurisdiction it was only "to decide on a question of principle," and it was "not called upon to specify which are the territories, detached from Turkey and assigned to Greece after the Balkan wars or subsequently, where the lighthouses in regard to which the contract of 1913 is operative are situated." Thereafter, the French and Greek Governments failed to reach an agreement as to the application of the principle laid down in the Court's judgment to lighthouses situated in Crete (including the adjacent islands) and Samos. Regarding this question as "accessory to the principal question which has already been decided" by the Court, on August 28, 1936, the French and Greek Governments entered into a special agreement, requesting the Court to give a decision on the following question:

> [Translation] Whether the contract concluded on April 1/14, 1913, between the French firm Collas & Michel, known as the *Administration générale des Phares de l'Empire ottoman*, and the Ottoman Government, extending from September 4, 1924 to September 4, 1949, concession contracts granted to the said firm, was duly entered into and is accordingly operative as regards the Greek Government in so far as concerns lighthouses situated in the territories of Crete, including the adjacent islands, and of Samos, which were assigned to that government after the Balkan wars.

The special agreement was filed with the Registry of the Court on October 27, 1936. The French Government has designated M. Basdevant as agent in this case, and the Greek Government has designated M. Politis as agent. The latter Government has also named M. S. P. Séfériadès as judge *ad hoc*.

OFFICIALS AND CHAMBERS OF THE COURT

On November 25, 1936, the Court proceeded to the elections provided for in Article 21 of its Statute. M. Guerrero was elected President for the years 1937–1939, and Sir Cecil Hurst was elected Vice-President for the same period. During the period 1934–1936, Sir Cecil Hurst was President and M. Guerrero was Vice-President of the Court.

The acceptance by M. Hammarskjöld of his election as a judge of the Court created a vacancy in the office of Registrar. On December 5, 1936, this vacancy was filled by the election of M. Lopez Oliván as Registrar, for a term of seven years. M. Lopez Oliván had previously served as Deputy-Registrar of the Court from 1929 to 1930, and he had more recently been the Spanish Ambassador in London.

On December 15, 1936, the Court elected members of the two special chambers for the years 1937–1939, and members of the Chamber for Summary Procedure for 1937. During the three years to come, the Chamber for

[45] Series A/B, No. 62. See this JOURNAL, Vol. 29 (1935), p. 1.

Labor Cases will be composed of Sir Cecil Hurst, President, MM. Altamira, Urrutia, Negulesco and Hudson, with Jonkheer van Eysinga and M. Nagaoka as alternates; the Chamber for Transit and Communications Cases will be composed of M. Guerrero, President, MM. Fromageot, Anzilotti, Jonkheer van Eysinga, and M. Hammarskjöld, with Count Rostworowski and M. Nagaoka as alternates. During the year 1937, the Chamber for Summary Procedure will be composed of M. Guerrero, President, Sir Cecil Hurst, Count Rostworowski, MM. Fromageot and Anzilotti, with MM. Nagaoka and Hammarskjöld as alternates.

THE UNITED STATES AND THE RIGHTS OF NEUTRALS, 1917–1918

By Alice M. Morrissey

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In April, 1917, when the Balfour mission visited the United States to arrange for American coöperation with the Allies, Frank L. Polk, Counsellor for the Department of State, jocosely said, "You will find that it will take us only two months to become as great criminals as you are."[1] Polk's forecast has become common opinion, while American disclaimers of participation in crime are forgotten. The truth is that the United States continued to insist that certain Allied practices were illegal and refused to coöperate in them. On two separate occasions the Department of State informed members of the Balfour mission that the American attitude toward certain belligerent maritime measures remained unchanged. Mr. Lester H. Woolsey, then Law Adviser, later Solicitor, for the Department of State, wrote in a memorandum summarizing the attitude taken by American representatives in oral discussions with the British: "Great Britain has heretofore attained the objects set forth . . . through her exercise of belligerent maritime measures, depending upon the prize court to condemn property violating those measures. The United States regards certain of the measures in question as illegal; . . ."[2] A few days later Mr. Woolsey, in discussing two proposals for bunker control suggested to him by the British, said:

> In accepting either of these alternative proposals, it is to be understood that the United States Government does not thereby waive the contentions which it has heretofore made in regard to the British measures of blockade, rationing, letters of assurance, bunker control, black list, *et cetera;* and that the United States Government is not to be taken as adhering directly or indirectly or by implication to those measures or the grounds upon which they are founded, but that, on the contrary, the action of the United States is based on its intention, as a domestic measure, to prevent supplies from reaching enemy raiders or submarines, to prevent trading with, for the benefit, or on behalf of, the enemy, directly or indirectly, to prevent the carriage of contraband of war, to conserve the supplies of the United States for its own use and the use of its allies, and to economize ships' tonnage for the transportation of military necessities for the United States and its allies.[3]

A year later, during negotiations over the release of American goods seized under the British Order in Council of March 11, 1915, Secretary Lansing wrote:

[1] Hendrick, Burton J., Life and Letters of Walter Hines Page (3 vols., Garden City, 1923–1925), Vol. II, p. 265.

[2] U. S. Department of State, Foreign Relations, 1917, Supplement 2, Vol. II, p. 867.

[3] *Ibid.*, p. 876.

> The Government of the United States could not enter into any arrangement for the release of goods which would contemplate any undertaking on its part to withdraw from its attitude previously expressed with regard to the order of March 11, 1915, or not to raise any question in the future as to the validity of the Order in Council, or to withhold protection of rights of American citizens which may appear to have been infringed by the Order in Council and therefore to warrant espousal by the Government of the United States.[4]

Moreover, in 1927, when the United States and Great Britain agreed to dispose of certain pecuniary claims arising out of the war, no concession of principle was made by either country.[5] It must be seen, therefore, that the United States did not stultify itself and abandon the position it had assumed with regard to neutral rights between 1914 and 1917.

The acceptance of Polk's witticism as truth depends upon the failure to distinguish sharply between legitimate control over exports and unwarranted belligerent interference with neutral commerce. In the particular case of which Polk was speaking—the blacklisting of neutrals—Americans pushed the practice further than the Allies had in 1916, despite American popular excitement and official protest at that time. The United States as a belligerent brushed aside its arguments in the note of July 26, 1916, that the blacklist condemned "without hearing, without notice, and in advance."[6] The reversal of policy is not as marked, however, if attention is focused upon American procedure, for the note was followed by unofficial negotiations to remove particular names from the list and sharper protest was discouraged by the President.[7] If the record in the *World War Supplements to Foreign Relations* and in the second volume of Carlton Savage's *Policy of the United States toward Maritime Commerce in War* is carefully examined, it shows that the policy of the United States did not involve recantation on neutral rights or acceptance of Allied practices which had been labeled illegal. In most cases, it was not a reversal of opinion but a logical development from the attitude of the United States as a neutral. Where the United States had taken a firm stand, it did not foreswear itself; where it had made a weak defense of its rights as a neutral, it espoused belligerent pretensions in which it had tacitly acquiesced.

On the chief belligerent rights, blockade and contraband capture, the United States maintained its traditional views almost unimpaired. After the initial vacillation shown in the note of March 30, 1915, which seemed to admit a belligerent right to blockade neutral coasts and to modify traditional requirements, the United States had redeemed itself in October by declaring that it could not recognize the British order of March 11 as establishing a

[4] U. S. Dept. of State, Policy of the United States toward Maritime Commerce in War, edited by Carlton Savage (2 vols., Washington, 1934–1936), Vol. II, p. 790.

[5] U. S. Treaty Series, No. 756.

[6] U. S. For. Rel., 1916, Supp., p. 422.

[7] Savage, *op. cit.*, Vol. II, pp. 525–526.

legal blockade.[8] From this stand it never wavered.[9] When it became a belligerent, it laid down the rigorous Anglo-American rules of blockade, but Woolsey warned that "The basis of the coöperation of the United States is not to assist in the blockade of neutral countries, nor to take part in other measures of the Allies which the United States has heretofore regarded as unfounded in international law, . . . "[10]

On contraband, however, the United States had not taken a firm position as a neutral, for during the period from 1914 to 1917 it had refrained from protesting against additions to the contraband list and had failed to restrain the belligerents in their presumptions of hostile destination.[11] In a defense of its policy from domestic criticism, the Department of State had declared that the United States as a belligerent had broadly expanded the contraband list and had extended the doctrine of continuous voyage during the Civil War.[12] When the United States in 1917 issued a comprehensive contraband list and laid down broad presumptions of hostile destination in the case of absolute contraband, it was following a path already marked out in the period of its neutrality.

This 1917 list included (a) arms and munitions of war, (b) equipment for transportation, (c) apparatus for communication, (d) coin, bullion, and currency, (e) fuel, food, forage, and clothing, and the materials and machinery for the manufacture of all the articles in each group.[13] There was no express mention of absolute and conditional contraband, but the rules as to destination showed what was absolute and what conditional contraband. Though American diplomats had not made strenuous efforts to uphold the right to trade with the enemy civilian population in goods on the conditional contraband list, the United States had reserved its rights when the British declared that the distinction between the two kinds of contraband had lost its validity.[14] As a matter of fact, neither the United States nor Great Britain abandoned the divisions of contraband, for the British continued to declare articles conditionally contraband and the Americans made the distinction on the basis of destination. The first four groups on the American list—arms, equipment for transportation, apparatus for communication, and money—were to be condemned if destined to territory belonging to or occupied by the enemy; the last group—fuel, food, forage, and clothing—only when intended for the use of the enemy government or its armed forces. In the first four groups, hostile destination was to be presumed from consignment "to order" or to an unnamed consignee, if "going to territory belonging to or occupied by the enemy, or to neutral territory in the vicinity thereof." For

[8] U. S. For. Rel., 1915, Supp., pp. 153–154 and 585; see also Savage, *op. cit.*, Vol. II, pp. 280–281. [9] *Ibid.*, pp. 789–790. [10] U. S. For. Rel., 1917, Supp. 2, Vol. II, p. 866.
[11] *Ibid.*, 1914, Supp., pp. 373 and 251–252 for illustrations.
[12] *Ibid.*, p. ix. [13] *Ibid.*, 1918, Supp. 1, Vol. II, p. 920.
[14] *Ibid.*, 1914, Supp., pp. x and 233–234; *ibid.*, 1916, Supp., pp. 385 and 483.

absolute contraband, in other words, the United States adopted the Allied presumptions which made serious inroads upon neutral trade. Goods in the last and largest class were to be condemned as destined for the enemy government or its armed forces only if they were consigned to the enemy authorities, to a port of equipment or base of supply, or to a contractor in enemy territory who notoriously supplied articles of the kind in question to the enemy authorities—the familiar stipulations of the Declaration of London. The naval instructions went beyond the Declaration, however, by applying the doctrine of continuous voyage to conditional as well as to absolute contraband. They also gave up the attempt to distinguish between continuous transportation by water and a voyage completed by inland shipment, saying, "It is immaterial whether the carriage of contraband be direct in the original vessel, or involve trans-shipment or transport over land." [15] Since no American court passed on the evidence required for the condemnation of contraband, however, the American interpretation of these regulations cannot be compared with British and German views. To sum up—after refraining from protest against additions to the contraband list and failing to restrain belligerents in their presumptions of hostile destination, the United States maintained a distinction between absolute and conditional contraband but extended the presumptions of hostile destination for absolute contraband and upheld the doctrine of continuous voyage for both classes of contraband goods. It cannot be said, however, that the record of the United States on blockade and contraband is one of recantation.[16]

Although American treatment of the mails as a belligerent seems to be a reversal of the previous contentions of the United States, deeper consideration will show that it actually is not, for the American position was gravely impaired before the United States entered the war. In the memorandum to himself which Secretary Lansing wrote in 1915, he avowed his inclination toward the Allies and exhibited pride in his unneutrality of thought. The defense of the inviolability of the mails in 1916 was admittedly "half-hearted"

[15] U. S. For. Rel., 1918, Supp. 1, Vol. II, pp. 920–921.

[16] The belligerent right to punish unneutral service gave rise to little controversy during the period of American neutrality or belligerency. The naval rules mentioned transmission of information in the interest of the enemy by radio but embodied no essential departure from tradition. (*Ibid.*, pp. 929–930.) The conception, however, was occasionally invoked in new situations. For example, Germany tried to control neutral commerce by granting safe-conducts to vessels in the danger zone, if assurance were given against re-export of the cargo or discharge of contraband at enemy ports. (*Ibid.*, p. 1083.) France declared vessels accepting safe-conducts to be in the service of the enemy, and the United States protested that such control might deprive a vessel of its neutral character. (*Ibid.*, pp. 1084–1085 and 1093.) Branding as unneutral service the acceptance of a German safe-conduct is interesting but led to no development of the doctrine. Again, the Dutch asserted and the Americans denied that employment of chartered Dutch ships in the war zone to carry troops and munitions of war to Europe would be unneutral service. (*Ibid.*, pp. 1439 and 1461.) The records show no extension of the bases of condemnation for unneutral service during American belligerency.

and purposely verbose to provoke debate.[17] In contrast to Secretary Seward, who had overborne the naval arguments for the seizure of mails during the Civil War, maintaining that the future interests of the United States dictated a broad immunity for neutral mails, Secretary Lansing feared to hamper the United States by setting up restrictions which might be embarrassing in case of future belligerency.[18] By admitting in January, 1916, that parcels of merchandise sent in the form of letter mail were subject to seizure, the United States had made resistance to the searching of its mails impossible. In May, however, it had denied that the Allies had any right to interfere with mails on neutral vessels which had merely touched their ports.[19] When the United States entered the war only eleven months later, it completely ignored this one effort to limit belligerent control over mails and immediately established a censorship for mails on all vessels touching American ports.[20] In persuading Cuba to adopt a similar censorship, the Secretary of State argued that a belligerent had the right to inspect mails passing between neutral countries as long as those nations did not take steps to keep contraband and noxious despatches out of government mails.[21] This imposition on neutrals of an obligation to prevent the transmission of contraband or hostile despatches through the mails would have laid upon them a new and vexatious burden. Making the failure to fulfill such a duty the basis of a right to interfere with mails would have been an unwarranted belligerent pretension. Fortunately for the record of the United States as a champion of neutral rights, it never assumed this extreme position, for the Secretary's views were advanced only as arguments which the American minister might use unofficially to justify censorship. In practice, moreover, the United States did not push interference with mails to its furthest limits. After exempting official diplomatic correspondence from censorship, it took no part in British interference with Swedish diplomatic mails.[22] In general, however, American precedent now permits mails to be subjected to censorship and to search for merchandise, articles of enemy ownership, and certificates of indebtedness. The United States has abandoned its contention that mails passing through belligerent ports are not properly within the territorial jurisdiction for censorship, but as a neutral it had already sacrificed its Civil War precedents on the inviolability of mails.

American policy with regard to sowing mines upon the high seas showed an evolution similar to that on mails. In August, 1914, when the British declared that they might have to lay mines as the Germans were doing, the

[17] Lansing, Robert, War Memoirs (Indianapolis and New York, 1935), pp. 19–21 and 125–126.

[18] See Baxter, James P., 3rd, "Some British Opinions as to Neutral Rights, 1861–1865," in this JOURNAL, Vol. 23 (1929), pp. 525–527; and Savage, *op. cit.*, Vol. II, p. 528.

[19] U. S. For. Rel., 1916, Supp., pp. 591–592 and 604–608.

[20] *Ibid.*, 1917, Supp. 2, Vol. II, pp. 1242–1243.

[21] *Ibid.*, 1918, Supp. 1, Vol. II, pp. 1739–1740.

[22] *Ibid.*, 1917, Supp. 2, Vol. II, p. 1242.

United States made known its objections, but when the British Admiralty proclaimed the whole North Sea a dangerous area this country refused to join with other neutrals in protesting.[23] Not until February, 1917, did the United States enter a specific reservation of its rights, saying:

> As the question of appropriating certain portions of the high seas for military operations, to the exclusion of the use of the hostile area as a common highway of commerce, has not become a settled principle of international law assented to by the family of nations, it will be recognized that the Government of the United States must, and hereby does, for the protection of American interests, reserve generally all of its rights in the premises, including the right not only to question the validity of these measures, but to present demands and claims in relation to any American interests which may be unlawfully affected, directly or indirectly, by virtue of the enforcement of these measures.[24]

A few months later, the military necessity of checking the submarine danger led the United States to take the lead in laying a mine barrage from Great Britain to the territorial waters of Norway.[25] This done, however, the United States refused to join in the British ultimatum demanding that Norway mine its waters, but represented to Norway that failure to enforce its decree preventing submarines from passing through its territorial waters was a discrimination in favor of Germany. When the British threatened to mine Norwegian waters themselves, the United States refused its support, saying "this Government does not wish to act in a way that can be construed as an infringement of the territorial sovereignty of Norway."[26] In this dispute, therefore, the United States showed more respect for the rights of neutrals than did its associates. By quiescence as a neutral and practice as a belligerent, however, it has given its sanction to the laying of mines in large areas of the high seas.

In contrast to the absence of emphatic protest on contraband, mails, and mine-laying, stands American neutral opposition to search in port. During the period of belligerency, the record shows divergent counsels and practices. The American rules outlined the customary procedure for boarding and inspection of papers without any mention of sending ships into port for search. These rules were observed, according to the Secretary of the Navy, for no vessels were brought into port for search. Control, however, was exercised over ships "in their own interests." When the submarine menace caused the convoying of merchantmen, the ships escorted were subjected to certain regulations, and other merchantmen were routed or required to speak stations along the American coast.[27] In other words, the Americans followed the British in advising vessels to call for navigating instructions and later in making agreements with steamship lines to ensure calling in American ports

[23] U. S. For. Rel., 1914, Supp., pp. 455–456 and 466.
[24] *Ibid.*, 1917, Supp. 1, p. 519.
[25] Savage, *op. cit.*, Vol. II, pp. 697–698.
[26] U. S. For. Rel., 1918, Supp. 1, Vol. II, pp. 1769–1770, 1772–1773, 1775–1776, and 1781–1782.
[27] *Ibid.*, pp. 925–927 and 933–936.

for search.[28] Toward the close of the war, the United States War Trade Board wished to inaugurate a policy of enforced deviation for search. Instead of requiring all ships which sailed to and from the Western Hemisphere without coming under the territorial jurisdiction of the United States to call at Halifax for examination, the Board, in coöperation with the British, worked out a system allowing a vessel to call either at an American or a British port. The very day of the armistice with Germany, the Solicitor for the Department of State made emphatic objection to the proposal, saying:

> If it is adopted by the United States, our contentions while neutral, and the claims of American citizens admitted by us to be good at the time, are, it seems to me, cast aside. I doubt whether the Government as a matter of policy, or law, ought to or can invalidate such claims as may be good, by action of this kind.[29]

Since belligerent interference with commerce soon came to an end, a substitute for the War Trade Board's plan was never considered. American protests and claims based upon enforced deviation for search in port, therefore, remain unimpaired, but the State Department, in spite of the agreement of May 19, 1927, with Great Britain, is loath to admit them, thus gravely injuring American neutral rights and its own position during the war. Though the United States still contends, as it did in 1915, that vessels should be searched on the high seas and not sent into port for rummaging, on the basis of its record it may have difficulty in resisting belligerent practice entailing a "voluntary" call in port and resultant legal search within the territorial jurisdiction.

Search in port, however, is only a means of enforcing belligerent rights, not a new legal basis for interference with neutrals. It is, therefore, on an entirely different footing from retaliation, which was purported to be elevated as a right during the World War. In fact, the belligerent practices which bore most heavily upon neutrals—ruthless submarine warfare and the so-called "blockade" of Germany—had retaliation as their sole bases in international law. The United States had maintained that retaliatory measures which affected neutrals were essentially illegal and that the claim or pretext of retaliation could not be invoked to abridge the rights of neutrals. From the Germans, the United States obtained acceptance of its views in the abortive concession on the *Lusitania* in February, 1916. From the British, it won no successes but saw British practice upheld by the prize courts of the Empire.[30] The entry of the United States into the war led to no sacrifice of

[28] Agreements were made with two Spanish lines running to Latin America to ensure search of vessels and control of shipments. (U. S. For. Rel., 1918, Supp. 1, Vol. II, pp. 1730–1731.) The War Trade Board wished to arrange that Spanish vessels proceeding directly from Latin American ports to Spain be required to call at Puerto Rico to avoid being taken into Gibraltar or Kirkwall for examination. (*Ibid.*, p. 1738.) The Spanish lines preferred a private arrangement by which their ships would call, and, therefore, the United States took no official steps. *Ibid.*, p. 1744 n.)

[29] *Ibid.*, pp. 100–1004 and 1010–1011.

[30] For American assertions, see *ibid.*, 1915, Supp., pp. 394 and 589; for *Lusitania*, *ibid.*

American views upon retaliation, for this country took no belligerent action based upon this claim of right.

Before acclaiming the United States for maintaining an unimpaired position on blockade, search in port, and retaliation, and showing some care for neutrals in disputes over mails and mining, it should be noted that the United States was under small temptation to take measures of questionable legality and that its entry into the war actually made the lot of neutrals harder. So overwhelming was the economic and naval preponderance of the Allied and Associated Powers after America declared war that the United States had little occasion to invoke belligerent rights. Though the neutrals did not suffer from strained interpretations of belligerent right, however, they were put at a distinct disadvantage when the last great neutral market disappeared and the economic weight of the United States was thrown upon the side of the Allies.

When the United States entered the war, neutral trade was already under Allied direction, for neutral vessels complied with British rules in order to get bunker fuel, carried cargoes acceptable to the British, and refused consignments from persons on the black list. As a neutral the United States had protested against blacklisting and the discriminatory use of bunker coal, but without any expectation of changing British policy, and in fact had accepted the British black list in 1916 at a time when Canada refused. As soon as the American declaration of war became certain, the British began to urge the United States not to pursue a divergent economic policy. After pointing out that this country was in a position economically strong enough to enforce trading restrictions without fear, they argued that the United States could bring pressure upon neutrals without retreating from the position it had defended by basing its action upon the ground that no nation could be expected to contribute to the success of its enemy. The Balfour mission outlined the part the United States could play and furnished the British personnel of an Anglo-American joint advisory committee to consider the Allied program. From the deliberations of this committee came recommendations on rationing neutral countries, licensing exports, bunker control, and black lists. Though rationing had been practised for more than a year, coöperation from the United States would make the policy more effective, the committee reported, because neutral consent would not have to be secured and the ration could be made a bargaining point to obtain neutral shipping. Regulation of exports and bunker fuel was particularly urged. If the United States were to license all its exports, it could control its trade with neutrals and could render British letters of assurance unnecessary. American coöperation in bunker control was advisable at least to prevent American coal from being used to defeat Allied aims, and blacklisting was desirable to discourage the Germans.[31]

What was the American reaction to these proposals which demanded the

1916, p. 171; for British prize cases, see Lloyds' Reports, Vol. V, p. 361 (*Stigstad*) and Vol. VII, p. 262 (*Leonora*). The *Stigstad* and *Leonora* cases are also reproduced in this JOURNAL, Vol. 13 (1919), pp. 127 and 814. [31] U. S. For. Rel., 1917, Supp. 2, Vol. II, pp. 804–865.

modification of certain neutral opinions? With the general policy of economic control there was no quarrel, for its legal basis was sound and its belligerent necessity apparent. In a long memorandum which furnishes the best evidence of the attitude of the United States,[32] Mr. Lester H. Woolsey, then Law Adviser for the Department of State, clarified the American position, basing it squarely upon sovereign right. The United States might participate in the rationing of neutrals "not to assist in the blockade of neutral countries" but to conserve its own supplies, to prevent persons in its territory from trading with the enemy, and to conserve tonnage for the transportation of military necessities. When neutrals were forced to employ their shipping to Allied advantage, they should not be compelled to call at British ports for search or to go into the danger zone except to carry their own supplies. In the granting of letters of assurance, equality with Great Britain should be secured. On the critical questions of bunker control and blacklisting, Mr. Woolsey refused to accept enemy nationality or association as sufficient for proscription, but demanded some evidence of benefit to the enemy. He also declared that the United States was not prepared to interfere with imports from blacklisted firms, unless the transaction amounted to trading with the enemy, because the United States could not afford to rouse ill feeling in Latin America and to lose the profits from trading with Germans there. In general, Mr. Woolsey sanctioned skilfully directed economic pressure, based on sovereign right.[33] The policy thus outlined and approved, embodied practices to which the United States had objected in vain, but the American program in May, 1917, was perhaps somewhat less severe than the Allied, for Mr. Woolsey suggested certain limitations in favor of neutrals, some of which were to disappear after a year of belligerency.

The control of exports foreshadowed in the memorandum of the joint advisory committee and Mr. Woolsey's comments was inaugurated in June, 1917. To bring the neutrals to negotiate rationing agreements, all licenses to certain countries were suspended as soon as licenses were required. In explaining this policy to neutrals, the United States denied any intention to hamper neutral trade but declared that because of the stringency of its supplies its own needs and those of its Allies came first. After the neutrals had stimulated their own production to the maximum, they should furnish an estimate of their requirements, for which pre-war imports could no longer be taken as the criterion. Furthermore, since the United States was granting a favor in stinting itself to supply neutrals, the price paid for merchandise was not an adequate return, but a certain amount of neutral shipping should be employed to benefit the Allies. The final American stipulation was that no American products should be sent by the neutrals to Germany or be converted so that they went to Germany in dissimilar form.[34]

Though Germany's neighbors, Scandinavia, The Netherlands, and Switzer-

[32] This memorandum, according to Mr. Woolsey and Mr. Polk, summarized the American attitude, though it was not made the basis of a formal communication to the British. U. S. For. Rel., 1917, Supp. 2, Vol. II, p. 865 n. [33] *Ibid.*, pp. 865–870. [34] *Ibid.*, pp. 908–910.

land, against whom this policy was directed, were not economically self-sufficient, these nations did not hasten to supply the United States with figures on their food needs. After August 30, 1917, therefore, licenses for all exports to the northern neutrals were suspended. Except for very short periods, however, American exports to Germany's neighbors did not completely cease,[35] but the United States became the driving force behind this policy of coercion which the Allies had urged but never initiated alone. To enable it to succeed, the British and French agreed that exceptions to the embargo should not be granted except for products imperiously needed in waging war or for some "vital interest recognized by the Allies." [36] Since the general embargo aroused resentment in neutral countries, the United States found it politic to disclaim any "desire to hamper neutrals in their normal life or inflict upon them any hardships not necessarily resulting from the execution of the aims outlined." [37] In the tedious course of negotiations with the neutrals, President Wilson once raised his voice in protection of a neutral:

> Inasmuch as we are fighting a war of principle, I do not feel that I can consent to demand of Norway what we would not in similar circumstances allow any government to demand of us, namely, the cessation of exports of her own products to any place she can send them. I am convinced that our own legitimate position is that we will not supply the deficiencies which she thus creates for herself if the exports are to our enemies.[38]

The next day it was hastily explained that by "cessation" the President meant complete stoppage, not limitation.[39] A year later, however, the President's moderating influence was not apparent, for Secretary Lansing wrote "that the objective of the Associated Governments should be the entire cessation of all exports to Germany and the making available to them of Holland's entire exportable surplus." [40] In spite of the pressure of the Allied and Associated Powers, no neutral agreed to a complete prohibition on the exportation of its own products to Germany.

Neutral resistance to coercion made the maintenance of an embargo so onerous to the Allies that the latter urged its suspension on non-essential products. Though the United States objected to concessions while negotiations were in progress, it was eventually obliged to yield. When the British, however, wanted supplies furnished to firms, known to be pro-Entente, whose business was adversely affected by the embargo, the Americans pointed out that licenses to such firms would defeat the effect of the embargo.[41] As agreements were concluded with the neutrals during 1918, the export prohibitions were gradually lifted.[42] In the employment of embargoes against neutrals,

[35] U. S. Bureau of Foreign and Domestic Commerce, Monthly Summary, 1917–1918.
[36] U. S. For. Rel., 1917, Supp. 2, Vol. II, pp. 952–953.
[37] *Ibid.*, p. 961. [38] *Ibid.*, p. 986. [39] *Ibid.*, pp. 986–987.
[40] *Ibid.*, 1918, Supp. 1, Vol. II, p. 1562. [41] *Ibid.*, pp. 937, 939, 942, 950, 984–985.
[42] For texts of agreements, see *ibid.*, pp. 1671–1674, 1339–1360, 1363–1371, 1584–1590, 1170–1181, 1240–1263.

the United States had taken the lead and had caused the Allies to subordinate their commercial interests to the belligerent purpose of putting pressure on the enemy.

In taking advantage of the neutrals' economic dependence, the United States not only prevented trade with the enemy, but compelled neutrals to charter a portion of their shipping to the Allies and to refrain from laying up their vessels. Justification was found not only in belligerent interest but on broad grounds of "public utility." [43] Despite Mr. Woolsey's stipulation that vessels should not be forced into the danger zone except to supply their countries' domestic needs, the employment of vessels in dangerous trades was an essential feature of the agreements with certain neutrals and the stumbling block in negotiations with The Netherlands. When the Dutch proved unwilling to put into operation an arrangement which necessitated the employment of vessels in dangerous trades, the United States and Great Britain took over Dutch ships within their ports. Instead of making the ill-founded attempt to defend this act as angary, as the Allies did, the United States upheld it as the exercise of the territorial sovereign's power to requisition.[44]

To coerce individual steamship companies, bunker control and the licensing of coal exports were employed despite American complaints while neutral. When Mr. Woolsey examined the question in May, 1917, he raised no objection to bunker control, provided that it was squarely based upon sovereign right and not employed to force ships to traverse the war zone or to call at British ports for search. In January, 1918, however, the general regulations for licensing bunkers prohibited chartering by an enemy or person unacceptable to the War Trade Board, trading with an enemy port, or carrying enemies or enemy cargo. Ships which were bunkered were to carry approved cargoes and not to accept goods consigned "to order" or to persons with whom Americans or their associates were prohibited from trading, and were not to be bought, sold, or laid up without the consent of the War Trade Board. Vessels bound to European neutral ports were to call for examination as directed by the War Trade Board in spite of Mr. Woolsey's stipulations against forcing them into British ports for search.[45] In other words, without the impairment of neutral rights, the freedom of weak neutrals to trade in contraband or to a blockaded port was rendered illusory.

During the World War, the opportunities of the individual were further circumscribed by blacklisting. To the prevention of trading with the enemy, there was of course no objection in the United States. The question at issue was the prohibition of trade with enemies domiciled in neutral countries and with neutrals who might be trading for the benefit of Germans. In the

[43] U. S. For. Rel., 1917, Supp. 2, Vol. II, p. 861.

[44] *Ibid.*, 1918, Supp. 1, Vol. II, pp. 1253–1260, 1348–1352, 1408, and 1458–1460. See Wilson, G. G., "Taking Over and Return of Dutch Vessels, 1918–1919," this JOURNAL, Vol. 24 (1930), pp. 694–702.

[45] U. S. For. Rel., 1918, Supp. 1, Vol. II, pp. 946–949.

course of the war, Great Britain had accepted as the test of enemy character for blacklisting the Continental criterion of nationality, though both the British and the Americans had held domicile to be the basis of enemy character.[46] In the Woolsey memorandum, the nationality test was not approved, and some evidence was required that Germans in Latin America were benefiting Germany by their trade with the United States before their proscription. Despite this rebuff, the Allies renewed their pressure for the nationality test in the spring of 1918 but again failed to move the United States.[47] Though the United States refused to abandon its traditional criterion of enemy character, it modified its views as to accepting the British and French black lists *in toto*. In December, 1917, it issued a black list for Latin America, which included "enemies," "allies of enemies," and "persons acting for their benefit," and in March, 1918, broadened the list to include all the names on the British and French lists, whether in Europe or America.[48] When the Allies urged the Swiss Government to agree to the blacklisting of members of the *Société Suisse de Surveillance Economique*, an organization which received consignments from the Allies, the Secretary of State directed the Minister in Switzerland not to make a formal demand upon the Swiss Government for the recognition of the statutory list.[49] Nevertheless, the zeal with which the United States employed its published, confidential, and "cloaks" lists seems to preclude protest if the policy is employed against American citizens.

Despite the employment of bunker control and blacklisting, the United States withstood one measure of economic control which was persistently urged by the Allies. This was the "financial blockade," which involved financial pressure upon neutral banks which were assisting the enemy. Banking houses in the territory of the Allied and Associated Powers were to refrain from dealing with neutral banks which should grant loans to the enemy or should transfer certificates of indebtedness for him. For the purposes of this policy, "enemy" was to be interpreted as anyone upon an Allied black list.[50] After making slight changes in the British definition of "enemy" to make the policy more clearly a sovereign measure, Secretary Lansing submitted the proposal to the Secretaries of the Treasury and Commerce and to the Attorney-General. Of these, the Secretary of Commerce alone approved. The Attorney-General objected to it as the most extreme form of blacklisting:

> Restricting American dealings with such neutral citizens simply because the latter might also be entering into transactions with German enemies perfectly legitimate under the law of the neutral nation. Of course, if the trade was to be carried on by a United States citizen with a neutral citizen as an indirect means of trading with the German enemy, it would be unlawful, under the law of the United States as at present constituted,

[46] U. S. For. Rel., 1918, Supp. 1, Vol. II, p. 1022. [47] *Idem.*
[48] *Ibid.*, 1917, Supp. 2, Vol. II, p. 997; *ibid.*, 1918, Supp. 1, pp. 1023, 1026, and 1027.
[49] *Ibid.*, p. 1077. [50] *Ibid.*, 1917, Supp. 2, Vol. II, pp. 809, 899–902, and 924–926.

> and would be a criminal transaction under the terms of the present Trading with the Enemy bill.[51]

Secretary McAdoo declared that the same objects could be obtained by the control of foreign exchange and the transmission of commercial paper. Even when the objectionable feature of interference with direct transactions between neutrals and the enemy was eliminated, the Treasury persisted in preferring its own formula for control of foreign credits to the "financial blockade" urged by the Inter-Allied Blockade Committee and the Department of State.[52] The United States, therefore, was prevented from giving public assent to this extreme form of black list. On the other hand, though it did not acquiesce in the penalizing of firms simply because they had enemy connections, it employed financial pressure to prevent transactions for the benefit of the enemy.

Though a state of war continued to exist till 1921, and though the Allied "blockade" of Germany continued until June 28, 1919, the rigors of economic control over neutrals were modified soon after the armistice and were terminated before June 30, 1919.[53] American restrictions on trade with Germans ceased on July 14, 1919.[54] While the United States remained technically at war with Germany, no belligerent rights were exercised by the United States after the armistice put an end to hostilities upon the sea.

In assessing the attitude of the United States toward neutrals in 1917–1918, the practical fact that this country was waging war in coöperation with the Allies must be borne in mind. When the latter argued that American failure to support their policies might bring about the defeat of all, American complaints as a neutral were very naturally brushed aside. In the first stages of its belligerency, it advocated certain limitations on economic pressure, but as the severity of the conflict became more apparent it abandoned most of these self-imposed restraints. Till the end, however, it refrained from some extreme measures like the "financial blockade," securing its ends through other means. If the United States refused to give full support to all Allied policies, however, it took the lead in curbing neutral trade with Germany, going further than the Allies had done in the past or wished to do at the moment. In order to defeat Germany by throttling her trade, it did not hesitate to take advantage of the neutrals' dependence upon its supplies and thus made their lot harder than before.

In considering the policy of the United States toward neutrals in 1917–1918, the obvious question raised is, what are its implications for the future, in which Americans envisage themselves as neutrals? In the field of sovereign

[51] U. S. For. Rel., 1917, Supp. 2, Vol. II, pp. 938, 940, 940–941.

[52] *Ibid.*, pp. 942–943, 959–960, and 1005; *ibid.*, 1918, Supp. 1, Vol. II, pp. 951, 953–954, 965–968, and 977.

[53] U. S. War Trade Board, Report (Washington, 1920), pp. 148–149.

[54] Hudson, Manley O., "Duration of War between United States and Germany," Harvard Law Review, Vol. XXXIX (1926), p. 1045.

rights, the practice of the United States has made it difficult to resist "voluntary calls" for search in belligerent ports, discriminatory use of bunker coal, and blacklisting. Since the United States has the food and most of the essential materials which were rationed to the neutrals in the last war, it is in a fairly strong position to resist the employment of economic pressure to which it has given great impetus. The belligerents, however, may employ export embargoes, as they did in the period of American neutrality, to bring great industries to participation in their commercial controls. If the United States found resistance to belligerent pressure during the last war difficult because of the American desire to trade, it is likely to find opposition still more difficult in the future because of its own action in 1917–1918. It may discover, furthermore, that the exercise of sovereign rights makes the invocation of belligerent rights less frequent. The United States has preserved its views on blockade, contraband, and retaliation, but it may find that blockade becomes infrequent, that goods are cut off by other means than contraband capture, and that retaliation imposes many restraints upon neutral freedom. On the other hand, neutral rights have a high survival value and have emerged from periods of eclipse stronger than before. If, in a given situation, the United States determines to remain neutral, it is likely to invoke neutral rights with as much conviction as before and to meet belligerent measures defended as domestic legislation by a neutral exercise of sovereignty.

THE CONVENTION OF 1936 FOR THE SUPPRESSION OF THE ILLICIT TRAFFIC IN DANGEROUS DRUGS

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The Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs represents a further stage in the development of international criminal law.

It is curious to reflect how the small existing body of international criminal law has grown; not out of wide general principles, but *inductively*, step by step, in respect to particular offences which called for action of an international character. When such action has been taken, it has invariably been restricted by considerations of national sovereignty. In the international agreements which have dealt with criminal offences, *e.g.*, the Geneva Conventions as to slavery, counterfeiting,[1] and traffic in women and children,[2] the contracting states shrank from incurring obligations of a wide or general character and limited themselves to undertakings co-extensive only with the necessities of the situation. The international conventions as to crime illustrate in a particular manner only the nature of multilateral conventions in general, the utilitarian and pragmatic character of international legislation which develops in measure only as the common national interest in international regulation is strong enough to overcome objections to restrictions on national sovereignty.

The convention under discussion reflects this general tendency of international agreements. The necessity of dealing by international action with the traffickers in dangerous drugs had long been felt, but it was considered unwise to take any step until the more pressing problems connected with the international control of dangerous drugs had been settled. As the history of the international conventions dealing with narcotic drugs has been told more than once,[3] it will suffice here to say that one of the important results due to these

[1] See, as to the Geneva Convention of 1929 for the Suppression of Counterfeiting Currency, an article by E. Fitzmaurice in this JOURNAL, Vol. 26 (1932), p. 533 *seq.*

[2] There are, in fact, two conventions on this subject, the Convention of 1921 for the Suppression of the Traffic in Women and Children and the Convention of 1933 for the Suppression of the Traffic in Women of Full Age. Reference may be made also to the International Convention of 1924 for the Suppression of the Circulation of and Traffic in Obscene Publications, and the Draft Convention on Terrorism (See L.N. Doc.C.36.1936.V), which are allied to the development of the international law as to criminal offences.

[3] See especially the League of Nations pamphlet published in 1934, entitled *The League and the Drug Traffic*, which contains a full account of the matter within reasonable compass. See also article by Professor Quincy Wright "The Narcotics Convention of 1931," in this JOURNAL, Vol. 28 (1934), p. 475 *seq.*, and S. H. Bailey "The Anti-Drug Campaign," *passim.*

conventions was the distinction drawn between *licit* and *illicit* activities. It was the marking of this line between licit and illicit traffic which left the way open for an international punitive campaign directed against the persons engaged in illicit activities. Having erected an international system of control and supervision over *legitimate* activities in relation to dangerous drugs, governments realized that the next logical step was to endeavor to suppress the *illicit* traffic. The nefarious activities of the traffickers were organized on such a scale that the problem of their prosecution and punishment could only be tackled by the most energetic international collaboration.

The urgent need for international coöperation in this matter arose from the fact that national laws *as such* were not completely adequate to cope with the ingenuity and ceaseless activity of the illicit trafficker. The penal laws of all countries in respect to drug offences differed so widely that it was possible for the illicit trafficker in drugs to seek out countries in which he might commit certain offences without great risk or even with impunity. It was obvious, then, that there would be a distinct advantage in effecting some unification of penal law by setting out in an international agreement those acts relating to dangerous drugs which would be made punishable without exception in all countries.[4] A certain unification of penal law was desirable for one further reason. Numbers of cases had proved that it was still possible for persons, by conspiring or otherwise, to break the laws of other countries with impunity. A certain uniformity in national laws dealing with drug offences committed outside a particular country would prevent illicit traffickers entirely escaping punishment.

Moreover, it was felt that the penalties for drug offences were not heavy enough to discourage the trafficker from risking all for the large profits of his activities. International agreement to impose heavy penalties in all countries was essential if the trafficker were to be confronted on all sides with the danger of breaking the law. It was equally essential to close all gaps against the technical evasion of penalties due to such factors as the presence of the offender in a country which did not permit his extradition. To achieve this result, however, some relaxation by States of their cherished principles as to extradition and territoriality was indispensable, and this was only possible by international agreement. Finally, there was a general feeling that provision should be made for the fullest coöperation between administrations in the prosecution and punishment of offenders, especially as regards the arrangements for collaboration between the police authorities of different countries.

[4] The problem of the unification of penal law in the general sense was dealt with in a special report of the Fifth Committee of the League Assembly to the Assembly, Sept. 1931 (Doc. A.70.1931.IV). This report emphasized that unification should have for its first object offences in the suppression of which all civilized States are interested, *e.g.*, slavery, drug offences. The report also pointed out that the best method to follow would be to submit the question in each case to certain independent organizations having the necessary qualifications, requesting them to indicate how the League of Nations could best assist the process of unification.

Only in this way would the administrations be able to cope with those traffickers who profited by the perfection of modern communications to escape arrest and punishment.

These considerations, and, above all, the already proved effectiveness of international action in regard to drug questions, gave rise to a general conviction that the matter should be explored without delay.

Let us now turn to the preparatory work which led up to the Conference and the Convention of 1936.

I. Preparatory Work

At its 13th session in 1930, the Opium Advisory Committee (which is the advisory organ on drug questions to the League Council) recommended the centralization and unification of police control with the object of establishing a closer collaboration between the police authorities of the different countries with respect to drug offences. In pursuance of this recommendation the Committee, at its 14th session (January, 1931) invited delegates of the International Criminal Police Commission to be present at its sittings in order to examine the best means of obtaining an effective international coöperation. These delegates presented to the Committee certain proposals in the form of a draft convention, providing, *inter alia*, for the establishment in each country of a central police office which would remain in close contact with similar offices in other countries and with the League of Nations.

This draft was very largely based on the Convention for the Suppression of Counterfeiting Currency,[5] concluded in 1929; but embodied provisions in regard to heavy penalties for drug offences, extradition, punishment of offences committed abroad, etc., which went far beyond the original recommendations of the Opium Advisory Committee. The Committee therefore felt that these matters would require a thorough preliminary study and decided to hand the question over to a subcommittee which was charged with an examination of the points raised in the draft. This subcommittee held its first meetings in Geneva in June 1931. After studying the draft, it decided that before further steps should be taken, a questionnaire should be sent to the Governments of the States represented on the Opium Advisory Committee and to the Governments of Canada and the United States of America.[6]

The subcommittee had been meeting while the Conference on the Limitation of the Manufacture of Dangerous Drugs was still in session, and naturally the Conference's attention was drawn to the subcommittee's work. One

[5] See page 31, n. 1.

[6] The questionnaire dealt with the following three points:

(i) Whether it was possible to amend the national penal laws in a way to make punishable all or any of the acts enumerated in the draft convention.

(ii) Whether it was possible to treat all or any of the offences in question as extraditable crimes.

(iii) Whether Governments approved the police organization and the procedure of international collaboration set out in the draft.

result was that the following recommendation (Recommendation V) was inserted in the Final Act of the Convention adopted by the Conference:

> The Conference:
>
> Considering that, in order to combat more efficiently the smuggling and abuse of the substances covered by the Convention of this day's date, it is necessary by means of an international agreement to supplement the penalties provided for in Article 20 of the Hague Convention of 1912 and in Article 28 of the Geneva Convention;
>
> Considering that the Advisory Committee on Traffic in Opium and Other Dangerous Drugs has been presented by the International Criminal Police Commission with a draft international convention for the suppression of the illicit traffic in narcotic drugs the main features of which are based on the Convention of April 20, 1929, against Counterfeit Currency:
>
> Expresses the wish that, on the basis of the work undertaken by the Advisory Committee, a Convention may be concluded with the least possible delay for the prosecution and punishment of breaches of the law relating to the manufacture of, trade in, and possession of, narcotic drugs;
>
> And requests the Council to draw the attention of Governments to the importance of such a Convention, in order to hasten the meeting of a Conference to conclude a convention on this question.

As requested by this recommendation, the matter came before the League Council in due course, but the Council decided to wait for a further report from the Opium Advisory Committee before taking a definite decision.

Meanwhile Governments had sent in replies to the questionnaire issued by the subcommittee, and the question of the application of penalties to drug offences had been studied. When the subcommittee met again at Geneva in May 1933 it had before it a fuller documentation on which to base the continuance of its labors. Moreover, it was in a better position to appreciate and to face the difficulties of its task. On the question of the unification of the penal laws as to drug offences, the subcommittee came to the conclusion that this was not generally possible in view of the great diversity of these laws, the difference in the scales of penalties, the lack of similarity in terminology, and basic distinctions in matters of principle. The subcommittee found, however, a general admission by Governments of the necessity for imposing severe penalties, and on this account favored a limited undertaking by States in the draft convention that drug offences would be severely punished.

The subcommittee experienced some difficulty with extradition, as there appeared to be no uniform practice determining the seriousness of the different crimes for which extradition might be granted.[7] It therefore felt it necessary

[7] See also report to the Committee of Experts for the Progressive Codification of International Law by Mr. Brierly, Dec. 7, 1925 (L.N.Doc.C.P.D.1.25), which deals with the problem of regulating extradition matters by general convention. The following conclusion is set out on page 3: "We believe that on a large number of questions connected with extradition there already exists practical uniformity in the practice of States, and that in certain others the differences which exist are not founded on any seriously divergent policies and might be capable of reconciliation. But undoubtedly there are still other questions upon

to insert a clause in the draft convention under which a State might refuse extradition if the offence was not sufficiently serious.

Having completed its labors, the subcommittee reported to the Opium Advisory Committee, which again took up the matter on May 23, 1933. The Opium Advisory Committee was able to adopt a draft, and in accordance with paragraphs 1–2 of the Assembly resolution on the preparatory procedure to be followed in the case of general conventions negotiated under League auspices,[8] forwarded this draft and an explanatory memorandum to the League Council, with the suggestion that the draft articles should be communicated to Governments. The Council accepted the suggestion of the Advisory Committee and the draft was then circulated to Governments. Each Government was requested to inform the Secretary-General of its views with regard to the objects of the draft convention and with regard to the draft articles as a means of attaining them.

At its session in June 1934, the League Council,[9] finding that the majority of Governments who had forwarded observations at the first consultation were in favor of the conclusion of a convention, decided to ask the Opium Advisory Committee to consider these observations and on their basis to prepare an annotated draft convention. The Opium Advisory Committee then examined the observations of Governments and noted "with satisfaction" that a majority of countries had given their approval to the objects of the convention and that the observations referred merely to matters of detail. In the light of these observations the Committee was able to prepare a revised draft and this was communicated to Governments for the second consultation.

The results of this consultation came before the Council at its session in May 1935. As a large majority of Governments were found to favor the conclusion of a convention and to agree that the draft submitted to them was a suitable basis for the work of a conference, the Council decided that a con-

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which States appear to hold strongly opposed views, the existence of which renders a single comprehensive convention, regulating the whole practice of extradition for all States, unlikely of achievement."

[8] See Resolutions and Recommendations adopted by the Assembly during its Twelfth Ordinary Session, p. 11.

[9] It will be noticed that paragraphs 4 and 5 of the Assembly resolution as to the preparatory procedure to be followed in the case of multilateral conventions, provide that the Assembly shall decide at the end of the first consultation whether the subject is *prima facie* suitable for the conclusion of a convention, and at the end of the second consultation, whether a conference shall meet to conclude a convention. In view of the urgency of the question of the illicit drug traffic, the Assembly in both cases delegated this right of decision to the Council.

The fact that the Council discharged the functions allotted to the Assembly in paragraphs 4 and 5 is not at all contrary to the terms of the Assembly resolution. The resolution expressly states that the procedure set out by it shall "*in principle*" be followed, "except where previous conventions or arrangements have established a special procedure or where, owing to the nature of the questions to be treated or to special circumstances, the Assembly or the Council consider other methods to be more appropriate."

ference should be summoned in 1936 for the purpose of adopting a convention. Before fixing a final date for the conference, the Council decided that the annotated draft convention submitted on the second consultation should be subjected to a further revision in view of the observations forwarded by Governments. As the *rapporteur* to the Council pointed out, these observations were of a very important character,

> . . . touching not only upon some of the principles upon which the draft convention is based, but also some of the principles of national legislation. In fact, some Governments have declared that they are not able to become parties to the Convention unless certain of its stipulations are modified so as to conform with the system of legislation in force in these countries.[10]

The Council decided, in order that full account should be taken of these observations, to entrust the revision of the draft to a special committee of experts composed of Government nominees. The choice of Governments to whom invitations were sent, was based on two considerations: (a) that Governments which had presented observations of a fundamental character should be given the opportunity of taking part in the revision; (b) that the principal legal systems should have spokesmen on the Committee.

Finally, in the same session, the Council decided, in view of the fact that the International Criminal Police Commission had taken the initial step towards the convention and had always maintained a continued interest in it, to issue an invitation to the Commission to take part in the conference in a consultative and expert capacity, and also to assist the special committee of experts in its work of revision.

The Committee of Experts met at Geneva in December 1935. After giving careful consideration to the observations submitted by Governments on both consultations, the Committee prepared a revised text, and this was communicated to the Council and to Governments.

The Council at its January session, 1936, decided to call the conference for June 8, 1936, and to take the draft established by the Committee of Experts as the basis of the conference's work. Invitations to take part in the conference were forwarded to Governments, and the conference met at Geneva on June 8, 1936, as decided.

II. Analysis of the Convention

The preceding detailed account of the preparatory work of the Conference gives some indication of the patience and care with which the process of international legislation is conducted in practice. Almost always there is a stage of thorough preliminary studies and enquiries. Each step of the procedure is then made in close collaboration with the Governments who will after all be responsible for the application of the provisions of the instrument adopted. Nor is this all. Before the instrument is submitted to the plenary conference

[10] See L.N.Doc.C.208.1935.XI, page 3.

for definitive revision and adoption, the preliminary drafts undergo painstaking examination and revision at the hands of expert committees. To such long, careful and exacting preparations there is no real parallel in the field of national legislation.

Yet with all this long and elaborate preparatory work, the plenary conference, as was shown by the course of the present Conference on illicit drug traffic, and as will be demonstrated by a subsequent analysis of the final provisions of the Convention, tends to retain more than a merely formal importance.[11]

At the beginning of the deliberations in June, an interesting point arose as to the "sovereignty" of conferences meeting under League auspices. The United States delegation submitted a detailed amendment involving, *inter alia*, the limitation to medical and scientific purposes only of the use of opium. It was contended by several delegations that the amendment went beyond the scope of the Drug Convention which purported to deal only with penal law, that it was quite outside the preparatory work of the Conference, and that this was indeed the first time the matter had been raised. To these arguments objection was made that the Conference alone has sovereign powers, that it may take whatever decisions it thinks fit, and that any delegation to the Conference is free to propose a matter for inclusion in the Convention, which proposal the Conference is at liberty to accept or disregard.

The point was somewhat difficult as there appeared to be no fully established practice, though certain jurists took the view that the Assembly resolution of 1931 on the preparatory procedure to be followed in the conclusion of League Conventions [12] implied that the powers of the Conference were thereby limited *de jure* to the subject matter decided on by the Assembly or Council. Eventually the amendment was referred to a committee and inserted only as a Recommendation in the Final Act. In actual fact, therefore, the Conference did consider the amendment,[13] but the specific question of the sovereignty of conferences would seem nevertheless to be still unsettled.

Let us now examine the text of the Convention finally adopted. We may preface our analysis by the general observation that the final text does not differ in essentials from the earlier drafts.

Article 1 of the Convention defines the dangerous drugs to which the Convention extends, and in such a way as to embrace not only drugs to which existing international drug conventions apply, but all other drugs and substances which by virtue of the provisions of those conventions may later be brought within their scope. The article was adopted without serious discussion on fundamentals.

Article 2, the "key" article of the Convention, was responsible for the

[11] In passing, it is worthy of note that the Conference was attended by delegates from forty countries and observers from two others.

[12] See above, p. 35.

[13] This may possibly be regarded as a precedent for the future that the conference does have sovereign powers.

lengthiest discussions. Under its terms, the parties agreed to make the necessary legislative provision for severely punishing, particularly by imprisonment or other penalties of deprivation of liberty, a number of specific illicit acts [14] which fall within the generally understood notion of "illicit drug traffic," intentional participation in these offences, conspiracy towards their commission and attempts and preparatory acts (subject in the case of preparatory acts to the conditions prescribed by national law). Almost every word in this article was carefully weighed and considered. For instance, the formula "severely punishing, particularly by imprisonment or other penalties of deprivation of liberty" was expressly designed to oblige parties to punish severely offences of illicit trafficking, while leaving them free to inflict appropriate penalties in cases of minor importance. This obligation on States severely to punish illicit traffickers represents one of the great advances made by the Convention.

At the Conference a lengthy discussion took place on whether the words "if wilfully committed" should be inserted to qualify the acts specified in Article 2. This was an important point. Arguments for the omission of these words were that the onus of proof would thereby be cast on the person accused, and the immense difficulties of proof involved in the detection and prosecution of drug traffickers avoided. Furthermore, express mention in the Convention of the element of criminal intention was undesirable because it might lead to this element receiving a much greater importance than that allowed by the general rules of criminal law. However, against these arguments it was possible to set other considerations. The word "wilfully", especially in a convention dealing with penal law, would necessarily be interpreted in a technical manner and in almost all legal systems the element of wilfulness, *mens rea*, etc., simply implies the commission of the act in such a way as to lead to an *absolute presumption* of guilty intention. Again, the words "if wilfully committed" were at most a direction to the legislator, who, under Article 15,[15] remained perfectly free to place the onus of proof where he deemed fit. Finally, and this was an important consideration for certain countries, the effect of omitting these words might be to oblige the parties to punish severely acts of a purely negligent or inadvertent character.

Happily a compromise on the matter was reached: the words were omitted and an interpretation clause was inserted in the Final Act [16] as follows:

[14] These are: "The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs," contrary to the provisions of the Hague, Geneva and Limitation Conventions.

[15] See below, p. 42.

[16] The practice as to interpretation clauses of this nature has always varied; sometimes they are inserted in a protocol which is open to signature and ratification (*e.g.*, Convention for the Suppression of Counterfeiting Currency), sometimes, as here, in the Final Act.

> It is understood that the provisions of the convention, and in particular the provisions of Articles 2 and 5,[17] do not apply to offences committed unintentionally.

The effect simply is that negligent or inadvertent acts fall outside the penal provisions of the Convention.

Some discussion took place on the definition of the offences to be made punishable under the Convention. As in the Committee of Experts,[18] a proposal was once more made to find some general formula to embrace the manifold acts usually referred to under the head of "illicit traffic," the object being to render the Convention as elastic as possible in order to meet squarely the possible ingenuities to which drug traffickers might later have recourse. Elasticity was however obtainable only by sacrificing clearness and concision, and at the expense of the non-acceptance of the convention by certain Governments. In view of this, the Conference was constrained to fall back on the earlier text and to adopt the method of an enumeration as exhaustive as possible of the acts to be made punishable, their illicit character being fixed by reference to the earlier drug conventions. Apart from the exhaustive character of the list,[19] it will be noticed that the acts themselves are open to wide and elastic interpretation, as for instance, "offering," "distribution," "transport." This flexibility is reinforced by defining the illicit character of the acts by reference to the provisions of the earlier drug conventions, the language of these conventions being wide and capable of extension.

Article 2 imposes also an obligation to punish severely intentional participation and conspiracy.[20] The object is to penalize traffickers who direct operations from countries which do not punish, or do not punish severely, complicity or criminal conspiracy in drug offences. This object is indeed implemented by bringing within the scope of the article "attempts and, subject to the conditions prescribed by national law, preparatory acts." It is true that the notion of "preparatory act" is not clearly defined in Anglo-Saxon legal systems; but discretion is thereby given to the legislator to deal with individual cases in the manner most practicable in his own country, while consistent with the spirit of the Convention.

Article 3 deals with the case of countries still subject to Capitulations. Under it, parties having extraterritorial jurisdiction in the territory of another party undertake to punish such of their nationals as are guilty of the offences specified in Article 2 *at least as severely* as if the offence had been committed in their own territory. This article was drafted with particular regard to the difficulties experienced by China and Egypt in dealing with drug traffic problems.

[17] See as to Art. 5, below, p. 40.

[18] See as to the Committee of Experts, above, p. 36.

[19] For the acts in question, see above p. 38, n. 14.

[20] The wording of Art. 2 is in this respect much more clear and precise than in the earlier drafts.

Article 4 provides that each of the acts specified in Article 2 shall, if committed in different countries, be considered as distinct offences. The object of the article is simply to make it clear that each of the offences set out in Article 2 shall, if committed in different countries, be regarded as *distinct offences in relation to any one of the others*. Each of these offences is to be prosecuted as a distinct offence in the country in which it was committed, and not to be regarded merely as an element *accessory* to a principal offence committed elsewhere, with the consequence that it might not be punishable under the law of the particular country concerned.

Article 5 deals with the question of illicit cultivation, gathering and production. In its earlier form [21] it had caused several countries, particularly countries producing raw drugs, to entertain serious misgivings, mainly because it was felt undesirable to insert such a provision in the Convention while the question of a general international convention regulating the production of raw drugs was still only in the stage of examination and enquiry.[22] The result eventually was that the clause was detached from Article 2, to which it formerly belonged, and drafted in such a way as to make it perfectly clear that those countries only whose national law regulates cultivation, gathering and production of raw drugs are under an obligation to punish severely *contraventions of that law*. The undertaking is limited,[23] and the careful drafting leaves no room for equivocation.

Article 6 provides that in countries where the principle of the international recognition of previous convictions is admitted, foreign convictions for drug offences shall, subject to the conditions prescribed by domestic law, be recognized for the purpose of establishing habitual criminality. This article calls for no comment. It was adopted without discussion and within limits represents an obligation to recognize the extraterritorial character of certain penal convictions.

Articles 7 and 8 may be considered together. They were designed to prevent offenders escaping prosecution for purely technical reasons, and are based on similar provisions in the Convention for the Suppression of Counterfeiting Currency. Modifications of form only were made by the Conference.[24] These two articles, which are "prosecution" articles, should be carefully distinguished from Article 9 which is an "extradition" article. For the sake of clarity, their effect may be summed up as follows: If a delinquent commits a

[21] The clause was first inserted by the Committee of Experts, and Governments were, as a result of a decision of the League Council, asked to forward observations on the clause, particularly in regard to the possibility of including it in the subject matter of the conference (see Official Journal of the League, February 1936, pp. 68–69).

[22] For latest developments as to this convention, see report to the Council of the Opium Advisory Committee on the work of its 21st session, July 1936, pp. 16–17.

[23] The contraventions referred to in Art. 5 also fall outside Arts. 6–13, inclusive, which articles explicitly refer only to the offences specified under Art. 2.

[24] Thus the wording of Art. 8 was brought into line with that of a similar article in the Draft Convention on Terrorism.

drug offence in one country and takes refuge in another, he will normally be either prosecuted in that country or surrendered by it. In the case of *nationals*, extradition is applied in all cases by those States which allow their own nationals to be extradited, and therefore under Article 7 the obligation to prosecute nationals is made to apply only to other States, and even those States are under no obligation if the surrender of the offender would have to be refused for a reason directly connected with the charge (*e.g.*, period of limitation). In the case of *foreigners*, under Article 8 they are to be prosecuted and punished as if the offence had been committed in the territory in which they had taken refuge, provided that two conditions are satisfied: (a) extradition has been requested and could not be granted for a reason independent of the offence itself; (b) the law of the country of refuge considers prosecution for offences committed abroad by foreigners admissible as a general rule.[25] In a word, Articles 7 and 8 effectively close up a number of gaps against the technical evasion of prosecution and punishment.

Article 9, dealing with extradition, is an important article. Its purpose is to ensure that offenders do not escape extradition merely because drug offences are not expressly included in existing extradition treaties or are not recognized by existing extradition practice as between various countries as extradition crimes. Under Article 9 offences (save for illicit cultivation, etc., under Article 5) are deemed to be included as extradition crimes in any extradition treaty concluded or to be concluded between any of the parties to the Convention, and parties who do not make extradition conditional on the existence of a treaty or of reciprocity (*e.g.*, U.S.S.R.), undertake to recognize these offences as between themselves as extradition crimes. In order, however, that parties may not find themselves obliged to grant extradition for cases of minor importance or in a manner inconsistent with the principle of their extradition laws, the article further provides that extradition shall be granted in conformity with the law of the country to which application is made, and that any party to whom application is made for extradition shall have the right to refuse extradition if his competent authorities consider that the offence in question is not sufficiently serious. Practical considerations support the application of these provisions, for no country is likely to undertake the expense of applying for extradition in the case of drug offences of minor importance. It was mainly for this reason that no attempt was made to specify in the convention those offences which were so serious that extradition on their account should not be refused.

Article 10 supplements the principle of "severe" punishment laid down by Article 2 by providing for the seizure and confiscation of drugs and substances and instruments intended for the commission of the offences covered by the convention. A proposal was also made in the Conference for the seizure of

[25] The object of condition (b) is to exempt from the provisions of the article countries which, like Great Britain, generally speaking, only apply the system of territoriality in the case of offences committed abroad by foreigners.

profits derived from drug trafficking, but several delegations pointed out that such confiscation would be difficult in practice, and that it would be unwise to create obligations which certain countries would find it almost impossible to carry out, particularly as the object in view could be obtained otherwise through the imposition of heavy fines. These considerations prevailed and led to the non-acceptance of the proposal.

The remaining provisions of the Convention, apart from the usual formal clauses,[26] deal with arrangements for international coöperation and coördination of measures adopted by national administrations. Articles 11–12 provide for the creation in each country of a central office for the supervision and coördination of all operations necessary to prevent drug offences, for ensuring the prosecution of such offences and for maintaining close coöperation with the central offices of other countries. As the powers of this central office will normally form part of the duties of special administration set up under the earlier drug conventions, the necessary specialization in drug questions and experience of international coöperation is available to make these articles fully effective in practice.

Article 13 deals with the transmission of letters of request from one party to another. The text was made clearer than in the earlier drafts by employing in certain cases the wording of the Civil Procedure Convention of 1905.

Article 16 provides that the parties shall communicate to each other laws and regulations and annual reports on the working of the Convention, the clearing house for this information to be the Secretariat of the League of Nations.

Article 15 is of particular interest. It contains the usual saving provision inserted in conventions dealing with penal law, that drug offences are in each country to be defined, prosecuted and punished in conformity with the general rules of its domestic law. In order further to clarify the effect of this article, an interpretation clause was inserted in the Final Act to the effect that the Convention does not impair the liberty of the parties to regulate the principles under which mitigating circumstances may be taken into account.

Finally, attention may be drawn to the adoption once again of a practice which has become usual in multilateral conventions of this type. Proposals were made in the Conference which delegations felt would in practice lead to great difficulty in their own countries and which they felt bound to reject on purely practical grounds. Although the Conference on a majority vote shared their views, these proposals seemed nevertheless to be of value as ideals to which each country might in time be induced to ascribe. It was therefore felt that they might be inserted as recommendations in the Final Act in order not to be lost sight of, and to mark the Conference's approval of the principle involved. Four such recommendations were in fact inserted in the Final Act. Among these two may be noted as of special interest: the recommendation already referred to that Governments should abolish the use of opium for

[26] The formal clauses are Articles 17–25, inclusive.

other than medical or scientific purposes,[27] and a recommendation to create in each country specialized police services for the purposes of the Convention.

III

A few words may be said in conclusion.

The Convention rounds off the work of the earlier drug conventions which had aimed purely at control and supervision of *legitimate* activities. The present Convention is pointedly directed against *illegitimate* activities. It represents the logical culmination of the post-war campaign against narcotic drugs. It marks a further step forward in the extension of the field of international penal law to cover those criminal activities which affect the entire international community. And from another point of view it is of exceptional interest: it demonstrates that international legislation tends to be fullest and most extensive in application where utilitarian interests are the strongest.

[27] See above, p. 37.

RECTIFICATION OF THE RIO GRANDE IN THE EL PASO-JUAREZ VALLEY

By G. Frederick Reinhardt

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If one were to fly along the Rio Grande downstream from the city of El Paso, Texas, one would see stretching ahead for almost one hundred miles the construction works of an artificial river channel designed to replace the tortuous and meandering course of the old river. The rectification of rivers for purposes of flood control and general stability is an interesting but not a novel application of hydraulic engineering. This particular rectification project, however, enjoys the distinction of involving an international stream. One need not suggest the number of complex questions which must inevitably arise between two States undertaking to modify in this way a common arcifinious frontier. The background and development of this international plan, together with the treaty formulated to provide for and regulate the execution of the project, constitute a most interesting and unique example of contemporary international coöperation.

It is indeed remarkable that it should be a portion of the southwestern boundary that is the scene of this little known, but highly important work. No other frontier of the United States possesses a history so replete with deeds of blood and violence in the not far distant past. Today a relationship of coöperative endeavor, based upon a recognized solidarity of interest, has displaced the former relationship of conflict.

The Rio Grande between El Paso, Texas, and the Gulf of Mexico was made the international boundary between the United States and Mexico by the Treaty of Guadalupe Hidalgo in 1848.[1]

In 1884 a treaty between the two countries provided that despite any river movements due to accretion or erosion, the river should mark the common boundary, but that in cases of avulsive action the boundary should remain in the former river channel even though it became dry and abandoned.[2]

The necessity for an official organization duly accredited by both nations to determine the nature and causes of river changes, as well as to carry out the treaty provisions with regard to boundary location and other matters led to the establishment in 1889, by treaty between the two Governments, of a permanent International Boundary Commission with jurisdiction over all

[1] Art. V: Malloy, Treaties, etc., I, 1107; U. S. Treaty Series, No. 207; 9 Stat. 922. Reaffirmed by Treaty of 1853, Art. I: Malloy, Treaties, etc., I, 1121; U. S. Treaty Series, No. 208; 10 Stat. 1031.

[2] Arts. I and II: Malloy, Treaties, etc., I, 1159; U. S. Treaty Series, No. 226; 24 Stat. 1011.

questions arising as to the river boundary between the two countries.[3] Prior to this date the International Boundary Commissions, as successively constituted, had been engaged in surveying and laying out the boundary in ac-

[3] United States and Mexico, Boundary Convention, signed March 1, 1889: Malloy, Treaties, etc., I, 1167; U. S. Treaty Series, No. 232; 26 Stat. 1512; this JOURNAL, Supp., Vol. 5 (1911), p. 121. The Commission was given exclusive jurisdiction of all differences or questions which might arise on the boundary between the United States and Mexico along the Rio Grande and the Colorado River (Art. I). It was to be composed of two commissioners and two consulting engineers, one from each country, and such secretaries and interpreters as either Government might wish to add to its commission (Art. II). The treaty further provides that the Commission can only transact business when both commissioners are present and that it shall sit on the frontier of the two contracting countries (Art. III). The Commission is empowered to make necessary surveys of changes brought about by force of the current in both rivers, caused by either avulsion, accretion, or erosion, and to suspend the construction of works of any character along the Rio Grande and Colorado Rivers that are in contravention to existing treaties (Arts. IV and V). The Commission is authorized to call for papers of information relative to boundary matters from either country; to hold meetings at any point where questions may arise; to summon witnesses and take testimony in accordance with the rules of the courts of the respective countries (Art. VII). If both commissioners shall agree to a decision, their judgment shall be binding on both Governments, unless one of them shall disapprove it within one month from the date it shall have been pronounced (Art. VIII). This convention was originally limited to five years, but after being twice renewed, it was indefinitely extended by the Water Boundary Convention of 1900 (Malloy, Treaties, etc., I, 1192; U. S. Treaty Series, No. 244; 31 Stat. 1936). The first meeting of the Commission took place on January 8, 1894, at El Paso, Texas, in the office of the Mexican Consul. The Commission has had a continued existence since that date, although interruptions were experienced at certain periods during the Mexican Revolution (1911–1923) due to the withholding of recognition from Mexico by the United States.

The Commission's jurisdiction is extended to the land boundary for specific purposes, usually following an exchange of notes between the two Governments, agreeing on such procedure. In the winter of 1933–1934 the two sections of the Commission reset and repainted all the land boundary monuments between El Paso, Texas, and the Pacific Ocean. Various problems of an international nature and requiring an engineering solution have been submitted by the Governments to the Commission for investigation and report.

The United States Section by Acts of Congress, approved June 30, 1932 (47 Stat. 416), and July 1, 1932 (47 Stat. 481), has assumed the powers, duties, and functions of the American Section of the International Water Commission, United States and Mexico. In this connection the Commission operates some fifty stream-gaging stations to assist in the accumulation of data acceptable to both Governments with regard to the international rivers of the Mexican boundary for the purpose of study and report on the equitable use of such waters. In Mexico a similar coördination of functions has led to renaming the Commission in that country the "International Boundary and Water Commission."

Under the provisions of the Act of Congress approved August 19, 1935 (49 Stat. 660), together with executive action taken thereunder, statutory authorization is provided for the coöperation of the American Boundary Commissioner with representatives of the Government of Mexico in studies relating to the equitable use of waters of the Lower Rio Grande, Lower Colorado, and Tia Juana rivers. Provision is also made for the conduct by the American Commissioner of technical and other investigations relating to the defining, demarcation, fencing and monumentation of the land and water boundary; and construction of fences, monuments, and other demarcation of the boundary line as well as sewer and water systems and other enumerated structures crossing the international border. The act

cordance with treaty stipulations without enjoying the exercise of any further jurisdiction.[4]

The character of the Rio Grande has made the location of the river boundary often very difficult and precluded the simple application of the customary rules of international law relating to boundary rivers. The Rio Grande is a stream which carries large quantities of silt and is subject to violent and destructive floods. It is accordingly very unstable and tends to wander over the alluvial valleys through which it passes. Each time the river changes its course a new problem of boundary location is inaugurated which in turn gives rise to legal questions of both a public and private character and hinders the enforcement of the laws of the two Governments.

As a result of the labors of the Boundary Commission during the last decade of the nineteenth century, it was observed that there was a typical class of changes in the bed of the Rio Grande in which the river abandoned its own channel and separated off portions of land locally known as *bancos*.[5] To solve this problem wherein parcels of the territory of one country would be suddenly found on the other side of the river due to a change in the latter's course, the Banco Treaty of 1905 was entered into by the United States and Mexico, providing for the exchange of such parcels of separated land in order to retain the river as the boundary between the two countries.[6] The application of this provision was limited to areas not greater than 250 hectares (about 617 acres) and supporting not more than 200 inhabitants.[7] The protection of private title to property located on such *bancos* was provided for by the treaty and the inhabitants permitted to opt with regard to American or Mexican nationality.[8] In this fashion it was possible to reëstablish the river as the

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further embraces statutory authority and administrative provisions for the construction, operation, and maintenance of treaty and other boundary projects.

[4] Joint surveying commissions were provided for in the treaties of 1848, 1853, and 1882, with Mexico. This latter treaty was revived and extended by subsequent treaties in 1885, 1889, and 1894, to permit the completion of the work of relocation and remonumentation which was not actually begun until 1891. For accounts and reports of the work of these commissions, see Bartlett, J. R., Personal Narrative of Explorations and Incidents in Texas, New Mexico, California, Sonora and Chihuahua Connected with the United States and Mexico Boundary Commission, During the Years, 1850, '51, '52, and '53, New York, 1854; Report of William H. Emory, Major, First Cavalry and U. S. Commissioner, Washington, 1857 (House Ex. Doc. 135, 34th Cong., 1st Sess.); Report of the Boundary Commission upon the Survey and Re-Marking of the Boundary between the United States and Mexico west of the Rio Grande, 1891 to 1896, Washington, 1898 (Senate Doc. 247, 55th Cong., 2nd Sess.).

[5] See Joint Report of International Boundary Commission, dated January 15, 1895, at pp. 176–178, Vol. I of Proceedings of the International Boundary Commission, United States and Mexico, etc., Washington, 1903.

[6] Convention for the Elimination of the Bancos in the Rio Grande from the Effects of Article II of the Treaty of November 12, 1884. Malloy, Treaties, etc., I, 1199; U. S. Treaty Series, No. 461; 35 Stat. 1863; this JOURNAL, Supp., Vol. 1 (1907), p. 278.

[7] *Ibid.*, Art. II.

[8] *Ibid.*, Art. IV, which provides that "The citizens of either of the two contracting coun-

boundary in many places where it had left its former channel for a new one.[9] But it is obvious that this procedure was only partially remedial and that some preventive measures were highly desirable.

The development of the Rio Grande Federal Irrigation District [10] and the Treaty of 1906 with Mexico,[11] which together guarantee a regular supply of water for irrigation to the inhabitants of both sides of the river in the El Paso-Juarez Valley, have produced property values of suburban lands on the American side greater than $1,000 per acre and of farm lands in excess of $300 per acre. It follows that, although thirty years ago changes in the boundary line in this region may have worked no great hardships, today it is of the highest importance that they be reduced to a minimum.

The problem created by the nature of the Rio Grande is twofold, for the very characteristics which render it an unstable boundary in certain sections create a great flood menace to all agricultural and industrial interests in the same regions. In 1925 a flood of the river in the El Paso-Juarez Valley caused damage estimated at one half a million dollars. The tendency of the river to deposit silt in the valley sections of its course results in a raising of the river bed above the level of the surrounding country, thus increasing the already acute flood danger.

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tries who, by virtue of the stipulations of this convention, shall in future be located on the land of the other may remain thereon or remove at any time to whatever place may suit them, and either keep the property which they possess in said territory or dispose of it. Those who prefer to remain on the eliminated bancos, may either preserve the title and rights of citizenship of the country to which the said bancos formerly belonged, or acquire the nationality of the country to which they will belong in the future.

"Property of all kinds situated on the said bancos shall be inviolably respected, and its present owners, their heirs, and those who may subsequently acquire the property legally, shall enjoy as complete security with respect thereto as if it belonged to citizens of the country where it is situated."

[9] See the following issues of Proceedings of the International Boundary Commission, United States and Mexico: Elimination of Fifty Seven Old Bancos Specifically Described in the Treaty of 1905, First Series—Nos. 1 to 58, Washington, 1910; Elimination of Bancos, Treaty of 1905, Second Series—Nos. 59 to 89, 1913; Elimination of Bancos under Convention of March 20, 1905, Colorado River Nos. 501 and 502, Rio Grande Nos. 90 to 131, inclusive, 1929; Elimination of Bancos under Convention of March 20, 1905, El Paso-Juarez Valley, Rio Grande Nos. 301 to 319, inclusive, Fourth Series, 1931.

[10] The Reclamation Act was extended to Texas, June 12, 1906 (34 Stat. 259). Construction of the Elephant Butte Dam in New Mexico, about 150 river miles above El Paso, was authorized by Congress and $1,000,000 appropriated for the beginning of construction work, March 4, 1907 (34 Stat. 1357). The dam was completed May 13, 1916.

[11] Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes. Malloy, Treaties, etc., I, 1202; U. S. Treaty Series, No. 455; 39 Stat. 2953; this JOURNAL, Supp., Vol. 1 (1907), p. 281. This treaty provides for the annual delivery of 60,000 acre feet of water to Mexico in the river at the headworks of a Mexican canal about one mile below the point where the river becomes the international boundary line. The United States Section of the Commission is charged with the execution of the terms of this treaty, which provides for the distribution of the waters of the Rio Grande as far as Fort Quitman, Texas, at the lower end of the El Paso-Juarez Valley.

Similar to the matter of boundary location, the seriousness of the annual summer floods has grown with the passage of time in proportion to the municipal, industrial and agricultural development of the region. The construction of the Elephant Butte Dam as an integral part of the Rio Grande Federal Irrigation Project put an end to the menace of floods originating above the dam location, but has caused an increase in the rate of silt deposition in the El Paso-Juarez Valley. This accelerated rate of river bed elevation, due to the absence of the former large scouring floods, further decreased the stability of the river and rendered more acute the danger to developed lands from floods originating in the run-off area below the Elephant Butte Reservoir. By 1933 enough filling had taken place to raise the bed of the river near El Paso to a position twelve feet higher than the one it had occupied in 1907 and six feet higher than in 1917.[12] Between the cities of El Paso, Texas, and Ciudad Juarez, Chihuahua, the bed of the river is higher than certain principal streets in those two municipalities.

The considerable economic and legal difficulties produced both in the United States and Mexico by the uncontrolled river gave rise to engineering studies made during the 1920's which revealed that a solution of this problem could be obtained only through coöperative engineering action on the part of the two countries.[13] Despite large annual expenditures for flood protection, the local authorities had found themselves unable to cope with the problem.[14]

[12] Proceedings American Society of Civil Engineers, December, 1933, Vol. 59, No. 10, p. 1552.

[13] Report on Rio Grande Rectification, by Special Committee of Engineers, El Paso Chapter, American Association of Engineers, June 5, 1922; Report of Conditions of the Rio Grande on the Rio Grande Project, by L. M. Lawson, Engineer, United States Department of the Interior, March 10, 1925; Channel Improvements of the Rio Grande below El Paso, by Salvador Arroyo, Mexican Federal Civil Engineer, March, 1925. Statement to the United States and Mexican Governments and the International Boundary Commission on Rectification of a Portion of the Rio Grande, Juarez and El Paso Valleys, by Salvador Arroyo and L. M. Lawson, April 25, 1925; Joint Report on the Preceding Report, by Armando Santacruz, Jr., and Randolph E. Fishburn, Consulting Engineers of the International Boundary Commission, May 12, 1925; Effects of Rio Grande Storage on River Erosion and Deposition, by L. M. Lawson, Project Superintendent, United States Bureau of Reclamation, El Paso, Texas, May, 1928; The Present Régime of the Upper Rio Grande and the Problem the River has Created in the El Paso-Juarez Valley, by Salvador Arroyo, Chief Engineer of the Juarez Flood Control Commission, May, 1928; Statement Regarding Rectification of the Rio Grande, by J. L. Savage, Designing Engineer, United States Bureau of Reclamation, November 28, 1928; Report on Preliminary Estimates, Rectification of the Rio Grande El Paso-Juarez to Quitman Canyon, by Salvador Arroyo and C. M. Ainsworth, December 1928; Proposed Rectification of the Rio Grande from El Paso-Juarez to Quitman Canyon, by R. M. Priest, Superintendent of the Yuma Project, United States Bureau of Reclamation, May 2, 1929. An acknowledgment to the above listed studies is contained in the Joint Report of the Consulting Engineers of the Commission, dated July 16, 1930, and annexed to the Rectification Treaty of 1933 (See below).

[14] "The Mexican Department of Communications and Public Works and the city and county of El Paso have expended in the last few years over seven hundred and fifty thousand dollars ($750,000) to protect the cities of El Paso-Juarez and the Valley lands from floods." (Joint Report of Consulting Engineers, dated July 16, 1930, Mexico, D. F.)

Under instructions from their Governments [15] the two sections of the International Boundary Commission made extensive field and office studies which culminated in a report by the Consulting Engineers to the two Commissioners, submitted July 16, 1930. The Commission met in joint session in Mexico City in the latter part of the month and adopted Minute No. 129 of the Commission, July 31, 1930, which minute, together with the Consulting Engineers' report and appended exhibits, made a comprehensive report on the entire subject of rectification and contained a general engineering plan and specific recommendations.[16]

The general plan of Minute No. 129 received informal approval in principle by the two Governments, and it was further concluded that a formal convention be negotiated to provide for the construction of the project and to contain an agreement regarding the areas to be detached from each country by the straightened channel.

On February 1, 1933, a convention was signed at Mexico City by the United States and Mexico for the rectification of the Rio Grande in the El Paso-Juarez Valley. Ratifications were exchanged at Washington the following November.[17] The purpose of the convention is clearly set forth in the preamble thereto:

> The United States of America and the United Mexican States having taken into consideration the studies and engineering plans carried on by the International Boundary Commission, and especially directed to relieve the towns and agricultural lands located within the El Paso-Juarez Valley from flood dangers, and securing at the same time the stabilization of the International Boundary Line, which, owing to the present meandering nature of the river it has not been possible to hold within the mean line of its channel; and fully conscious of the great importance involved in this matter, both from a local point of view as well as from a good international understanding, have resolved to undertake, in common agreement and coöperation, the necessary works as provided in Minute 129 (dated July 31, 1930) of the International Boundary Commission, approved by the two Governments in the manner provided by treaty; and in order to give legal and final form to the project, have, etc.

In the first article, the two Governments agree to carry out the works described and recommended in Minute No. 129 of the Commission and they define the limits within which rectification is to take place.[18]

[15] Minute No. 111 of the Commission, dated Dec. 21, 1928, reported on the necessity of international action, presented a preliminary plan of the necessary works, and recommended that the Commission be authorized by the two Governments to proceed to a more detailed study of the matter.

[16] Annexed to, and made a part of, the Rectification Treaty. U. S. Treaty Series No. 864; 48 Stat. 1621.

[17] Ratifications exchanged at Washington, Nov. 10, 1933. For text of treaty and Minute No. 129 of the Commission, but with the Consulting Engineers' Report, maps, etc., omitted, see this JOURNAL, Supp., Vol. 28 (1934), pp. 98–107. The treaty, together with all annexes, is published in U. S. Treaty Series, No. 864, and in 48 Stat. at 1621.

[18] " . . . beginning at the point of intersection of the present river channel with the located line as shown in map, exhibit No. 2 of Minute 129 of said Commission (said inter-

In general, the technical studies provided an international plan for the stabilization of the boundary river, to be accomplished by the construction: first, of a rectified channel from El Paso-Juarez to the mouth of Box Canyon below Fort Quitman; and, second, of a flood control dam and reservoir on the Rio Grande in Sierra County, New Mexico, 22 miles below Elephant Butte Dam. The provisions of the convention stipulate that the proratable cost of the works will be borne by the two Governments in proportions calculated on the basis of the benefits each country will derive from the program upon its completion, and by consideration of the assessed valuations of properties which will be affected thereby.[19] The total estimated cost of the project is something more than six and one-half million dollars, while the proratable cost is about five million dollars.[20]

The rectification feature of the project will provide a straightened river and flood water channel for a distance of 88 miles through the El Paso-Juarez Valley, the old river distance over this terrain being 155 miles as a result of the meanders of the river. This rectified channel will be formed by the construction of parallel levees, generally 590 feet apart, and where possible in reasonably straight stretches the existing river will form the low water channel. There is involved the clearing of about 6,000 acres of right of way, the handling of 4,775,000 cubic yards of excavation, and 8,950,000 yards of embankment, and the reëstablishment of irrigation works and structures affected by the new channel. The Commission is charged with surveying the right of way to be occupied by the rectified channel as well as the areas to be segregated from either country in the process of straightening the river. The areas when surveyed and mapped by the Commission are to be eliminated "from the provisions of Article II of the Convention of November 12, 1884, in similar manner to that adopted in the Convention of March 20, 1905 for the elimination of bancos."[21] The United States and Mexico will each exchange with the other about 3,500 acres of land.

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section being south of Monument 15 of the boundary polygon of Córdoba Island) and ending in Box Canyon."

[19] Art. III. The proportions to be borne by the United States and Mexico are 88 per cent. and 12 per cent. respectively. See paragraphs 7 and 8 of Minute No. 129. In paragraph 12 of the minute it is set forth that costs non-proratable and "properly and practically chargeable to each Government separately" are those necessary for the purchase of rights of way and segregated tracts, as well as for changes in irrigation works.

[20] In Exhibit No. 5 of the Consulting Engineers' Report the grand total cost is estimated at $6,106,500, and the proratable cost at $4,932,000, but subsequent estimates have increased these figures by a few hundred thousand dollars.

[21] Art. V. Article II of the Treaty of 1884 provided that avulsive changes in the channel of the river would not produce a change in the location of the boundary line. The Treaty of 1905 provided for the exchange by the two countries, within certain limitations, of areas segregated by such avulsion and known as *bancos*. See *supra*, notes 6 and 7. In the Rectification Treaty, however, there are no stipulations limiting the individual parcels that may be exchanged, with regard to area or number of inhabitants. The requirement that each Government obtain "full ownership" of lands to be transferred obviates the necessity

After rectification, the international boundary line will be the middle of the deepest channel in the rectified area. The channel is being centered upon an axis located so that the total areas segregated from each country are exactly equal.[22] Each Government is to acquire full title and ownership to all required lands in its own territory and to exchange with the other one-half of the area required for rights of way and the total required for segregation.[23] When the project is completed the two countries will have exchanged equal amounts of territory.

The dam and reservoir feature of the project, under the convention, consists of the construction of a flood control reservoir of 100,000 acre feet capacity at Caballo, New Mexico, designed to control all flood waters originating above the dam, including the probable spill from the Elephant Butte Reservoir.

The rectified channel, in conjunction with the Caballo Dam, will afford adequate flood protection to both sides of the El Paso-Juarez Valley. The shortening of the river to almost half its former length over the same terrain will increase its gradient sufficiently to put an end to the silting and raising of its bed. The improved drainage resulting from confining the river to a straight and controlled channel will restore a considerable amount of land which is at present useless, although contained within the limits of existing irrigation districts. And there will be rendered available as well the land previously lost due to the excessive length of levee necessary along a meandering stream. It should be emphasized that shortening the river is shortening the international boundary. There will be only half the previous distance to patrol, as well as only half the length of levee to maintain and protect. The governmental ownership of rectified channel area on both sides of the river will eliminate the problem of private encroachments on the international stream and will be of material assistance in the enforcement of the immigration and customs laws of both countries.[24] No longer will problems of boundary location due to river movements arise in the valley.

The convention provides that the two Governments will study such further minutes as may be submitted by the Commission and, if they are acceptable, approve them for the purpose of putting into material execution the works provided for by the treaty.[25] The International Boundary Commission

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for any provisions looking toward the protection of private national rights or interests. With regard to areas, there is the general principle that within the rectified section of the river the total area segregated from one country must equal the total area segregated from the other.

[22] Art. VI.

[23] Art. VII.

[24] The principle of establishing a federal zone along the frontier for protection against the smuggling of goods found its first application in the United States, May 27, 1907, with the presidential proclamation of Theodore Roosevelt which reserved all public lands within sixty feet of the Mexican border within the State of California and the Territories of Arizona and New Mexico for that express purpose (35 Stat. 2136).

[25] Art. I. Minute No. 144 of the Commission, signed at Juarez, Chihuahua, June 14, 1934, presents the agreed final location of the rectified channel. Minute No. 145, El Paso, Texas, June 11, 1935, contains regulations for the elimination of areas cut from one country

is charged with the direction and inspection of the works, while each Government is to use for a constructing agency whatever governmental agency should so function in accordance with its administrative organization.[26] The construction of works by one party in the territory of the other is not to confer any property rights or jurisdiction to the first party over the territory of the second. "The completed work shall constitute part of the territory and shall be the property of the country within which it lies." Each Government is to acquire full title, control and jurisdiction of its half of the flood channel, from the axis of that channel to the outer edge of the acquired right of way on its own side, as described in the Minute of the Commission, and each Government is to retain permanently such full title, control and jurisdiction from the deepest channel of the running water in the rectified channel to the outer edge of the acquired right of way.[27]

There is provision for the suspension of construction at the request of either Government if it be proved that the works are being constructed outside of the conditions stipulated in the convention or fixed in the approved plan.[28] Each Government is to assume and adjust any private or national claims arising within its own territory, "for the construction or maintenance of the rectified channel, or for causes connected with the works of rectification."[29] Materials, implements, equipment, and supplies intended for the project, and passing from one country to the other, are exempted from import duties.[30] The rectified channel is to be maintained and preserved by the International Boundary Commission, which, for this purpose, is to submit for the approval of both Governments such regulations as may be necessary.[31]

It will be observed that the construction of the rectified channel renders inoperative, within the limits of such rectification, those provisions of earlier treaties with regard to the effect of river movements on the location of the international boundary. It follows from the provisions of the Rectification Treaty that, in the event the river should succeed in time of flood in escaping from its prescribed channel, and in establishing a new course, the International Boundary Commission, acting under its authority and duty to maintain and preserve such channel, would proceed directly to return the river to its proper position. As a practical matter, the responsibility would lie with that section of the Commission whose levee had given way and thus permitted the river to shift its location. No question of boundary location

and to be transferred to the other. Minute No. 148, Juarez, Oct. 28, 1935, contains a detailed distribution of the work to be performed by each of the two Governments and is entitled: "Work which each Government shall undertake on the Rio Grande Rectification Project in accordance with the Convention of February 1, 1933."

[26] Art. IV.

[27] Art. VIII.

[28] Art. IX.

[29] Art. X.

[30] Art. XII.

[31] Art. XI. The annual appropriation of funds by Congress for the United States Section of the Commission for the fiscal year 1937 includes an item of $21,000 to meet the costs of this requirement on the American side. (Act approved May 15, 1936, Public No. 599—74th Congress.) It is estimated that, when completed, the maintenance costs of the project on the left bank will be about $100,000 a year.

could possibly arise in view of the specific provision of the treaty that the boundary "shall be the middle of the deepest channel of the river within such rectified river channel." [32]

An exchange of notes at the time of signing the convention provided that the original maps, plans and specifications attached to Minute No. 129 of the Commission should control in the event that any differences be found to exist between such original documents and the copies attached to the convention itself.[33] At a later date, an agreement between the two countries established the understanding that "the spirit and terms of the Convention of February 1, 1933, do not alter the provisions of Conventions now in force as regards the utilization of waters from the Rio Grande and that, consequently, these matters remain entirely unaffected and in exactly the same status as existed before the Convention of February 1, 1933, was concluded." [34]

Under date of January 3, 1934, the Federal Emergency Administration of Public Works made an initial allotment of $2,800,000 for commencement of the work of Rio Grande rectification by the United States Section, and for the construction of a dam and reservoir at Caballo, New Mexico, as well as for the acquisition of necessary real and personal property in accordance with the convention.[35]

On February 3, 1934, the Secretary of State authorized the American Commissioner to begin construction. Work on the Mexican side is being carried forward by the Mexican Department of Communications and Public Works under the supervision of the Mexican Section of the Commission.[36]

As of June 30, 1936, about 50 per cent. of the total work to be accomplished on the rectification feature of the project had been completed.[37] It is esti-

[32] Art. VI.

[33] Mexican Minister for Foreign Affairs (Puig) and American Ambassador (Clark), Feb. 1, 1933. U. S. Treaty Series, *cited*, p. 53; 48 Stat. at 1668.

[34] Mexican Minister for Foreign Affairs (Puig) and American Ambassador (Daniels), Sept. 8, 1933. U. S. Treaty Series, *cited*, p. 54; 48 Stat. at 1668.

[35] The Public Works Administration made a second allotment to the United States Section of $500,000 for the rectification project, July 17, 1934. At present the construction work is being prosecuted with funds provided by a regular congressional appropriation of $1,200,000 for the fiscal year 1937. (Act approved May 15, 1936, Public No. 599—74th Congress.)

[36] The Commission has also been engaged in the joint construction of two international flood control projects at other points along the boundary, both of which developed as the result of investigations and engineering reports by the Commission, and which were authorized by executive agreements between the two countries. These projects are located at Nogales, Arizona, and Sonora, and in the Lower Rio Grande Valley between Rio Grande City and the Gulf of Mexico.

[37] Numerous parcels of land have been separated by the construction of the new channel, mapped, and transferred to the other country, under Art. V of the convention. The formal transfer of these parcels was effected by the following minutes: Minute No. 146, Juarez, Aug. 20, 1935, "Action on Parcels Nos. 141 to 151, Inclusive, Rio Grande Rectification Project in El Paso-Juarez Valley"; Minute No. 147, El Paso, Sept. 24, 1935, "Action on Parcels Nos. 1, 9, 10, 24 and 25, . . ."; Minute No. 150, El Paso, Dec. 13, 1935, "Action on

mated that the entire project will be finished within two years from this date. Under the treaty with Mexico, the construction of the Caballo Dam was contemplated only as a part of the channel stabilization and flood control plan. An interdepartmental agreement, dated October 9, 1935, between the Department of State and the Interior Department provided for the transfer of $1,500,000 from the Commission for the construction of such a dam. The dam, however, now actually being built, under a contract executed by the Bureau of Reclamation, June 9, 1936, is a higher dam designed for the development of hydro-electric power in conjunction with the Elephant Butte Reservoir as well as for flood control as required by the treaty. This hydro-electric feature of the Caballo Dam is purely national in character and is not being participated in by Mexico. The additional funds necessary for the construction of the high dam were provided by the Public Works Administration.

The commencement of work on the Rio Grande Rectification Project represented the undertaking of a plan which had been dismissed by many as far too complex ever to be realized. It is believed that for the first time in history, two sovereign States have entered into coöperative action to change peacefully their common boundary through an extensive area for the benefit of their citizens dwelling along that frontier.

The solution of the problem of the Rio Grande in the El Paso-Juarez Valley, as reached by the United States and Mexico, represents a very happy combination of diplomacy and international engineering. It deserves to be remembered as a most significant achievement in the realm of international coöperation.

Parcels Nos. 2, 3, and 4, . . ."; Minute No. 151, El Paso, Dec. 16, 1935, "Action on Parcels Nos. 107, 108, 109, 110 and 111, . . ."; Minute No. 152, Juarez, June 3, 1936, "Action on Parcels Nos. 130, 131, 132, 133, 134, 135, 136, 137, 139 and 140, . . ."

INTERNATIONAL COÖPERATION OF THE U.S.S.R. IN LEGAL MATTERS

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The term "judicial assistance," as used in international law, involves some still unanswered questions. Should it be used to embrace all the elements germane to the expedition of the business of courts of law, including not only procedural matters, but the execution of judgments and extradition; or relate exclusively to judicial assistance in civil proceedings? To avoid creating confusion by the use of a term suggestive of several meanings, in the following examination of the Soviet practice in this regard, the expression "coöperation in legal matters" is resorted to as an all-inclusive term.

In criminal cases, extradition is the most generally known manifestation of this coöperation. The Soviets follow the general rule prevailing in international law in regard to extradition, and adhere to the principle that extradition is governed by treaty provisions, or by special consent granted for each individual case when there is no such treaty between the states concerned. Thus, Article 16 of the Decree of the Central Executive Committee of the U.S.S.R. on the Principles of Criminal Procedure of the U.S.S.R. and Union Republics, of October 31, 1924, reads in part:

> The extradition of persons placed under criminal investigation or trial, or convicted by the courts of law, requested from the Government of the U.S.S.R. by the governments of foreign states is permissible only in the instances and in the manner established by treaties, agreements, and conventions between the U.S.S.R. and foreign states, and upon special agreements of the Government of the U.S.S.R. with foreign governments, as well as by special All-Union laws.[1]

The Soviet Union has no treaties on extradition. In cases where extradition is arranged for, according to the Circular of the People's Commissar of Justice No. 188 of 1924:

> The requests submitted to the People's Commissariat of Justice [2] for the arrest and extradition of a person residing abroad, must indicate the offense of which the person subject to arrest and extradition is accused, or for which he has been convicted, with reference to the article of the Criminal Code, and [must] be accompanied with copies of either the decrees of the investigation authorities charging the person, or of the sentences of the court convicting him in default.
>
> Requests for extradition may take place only in very serious cases, when the crime is extremely grave and when the proof that the accused person lives in a foreign country is beyond doubt.[3]

[1] *Sobr. Zak. i Rasp. S.S.S.R.*, I, 1924, p. 384.

[2] From local Soviet courts.

[3] *Ezhenedel'nik Sovetskoi Iustitsii*, No. 45, 1924, p. 1091.

Cf., Circular No. 92 of 1923, *infra*. Another circular of the same date stipulates that the

On the subject of legal coöperation of a procedural character in criminal cases Soviet documents offer very little enlightenment. There are no specific international agreements entered into by the Soviets on such coöperation, and it is only by implication from the wording of the first clause of the above quoted Article 16 of the Soviet Criminal Code of 1924, and from the wording of the notes of November 22, 1935, exchanged between the U.S.S.R. and the United States on the execution of letters rogatory that the conclusion may be drawn suggesting the possibility of such assistance in the Soviet practice. The former reads:

> In case it is necessary to perform outside the territory of the U.S.S.R. acts of a procedural nature in criminal cases pending in courts of law of the U.S.S.R. or of Union Republics, the courts communicate with the respective courts of law and administrative authorities of foreign states through the People's Commissariat for Foreign Affairs.

And *vice versa:*

> Courts of the Union of S.S.R. and of the Union Republics may accept from foreign courts requests to execute individual acts of a procedural nature in the territory of the Union of S.S.R. only through the offices of the People's Commissariat for Foreign Affairs.[4]

Compared with these provisions, the notes of November 22, 1935, exchanged between the Soviet Union and the United States, appear much less suggestive. In brief, they concern themselves with "the desirability of setting forth the procedure in our countries in the matter of execution of letters rogatory issuing out of courts in the other . . ."[5] Failing to emphasize that the execution of letters rogatory is to take place only in civil cases, it *eo ipse* affords an assumption that also criminal cases are included. It is only by implication from the practice of the United States that the latter call for special agreements that the contrary may be argued.

The problem of execution of criminal sentences issuing out of foreign courts calls for little comment. No existing rules of international law provide for judicial assistance of this nature, and there is no evidence found in the Soviet records that the U.S.S.R. is an exception to this.[6]

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requests for extradition must be accompanied only by most essential documents, and that these must be duly verified by the proper authorities. The failure to comply with this carries disciplinary punishment for those violating the rule. (*Ibid.*, p. 1091.)

[4] *Sobr. Zak. i Rasp. S.S.S.R.*, I, 1924, pp. 383–384.

[5] Executive Agreement Series, No. 83.

[6] It may be well argued that execution of sentences or judgments falls within the scope of the administrative authorities, and that therefore the term "judicial" is not applicable, particularly if the case is considered as judicially closed, when the sentence is pronounced or judgment decreed, *i.e.*, when the court terminates its function in a particular case by applying the law. Yet the fact that the execution of judgment actually is nothing but what may be called "materialization of the applied law," to be effected by duly delegated authority other than the judiciary, warrants the suggestion that the execution of judgments in this sense may be included in the "judicial coöperation."

So much for judicial coöperation in criminal cases. Much more definite is the position of the U.S.S.R. in civil disputes. From the substantive point of view, international coöperation in civil cases may be analyzed from three aspects: (1) the judicial and legal rights of foreigners, (2) judicial assistance in its narrow sense, meaning assistance in civil procedure only, and (3) execution of judgments. Inasmuch as the legal status of foreigners in the U.S.S.R. and of Soviet citizens abroad has been discussed elsewhere, only the last two aspects need be touched upon here.[7]

Conflict of laws involves the same issue as to procedural matters as for substantive questions; namely, a definition of the limits for the predominance of civil laws of a country. Yet there is material difference between the two. Whereas in substantive issues a state is often compelled to give predominance to foreign law before its own, in the case of procedure this can never take place: a court is never guided by foreign procedural laws. This means that rules governing procedure are always local and never transgress national boundaries. The Soviet Union is no exception to this. Article 1 of the Code of Civil Procedure of the R.S.F.S.R.[8] reads in part: "Rules of procedure in civil cases enumerated in this Code are compulsory for all institutions of the single legal system of the R.S.F.S.R." [9]

This fact that procedural rules are strictly local, however, by no means implies that national courts of one state, in the performance of their duties, never come into contact with the courts or other judicial authorities of another state. On the contrary, the need of international coöperation in the matters of civil procedure has long been fully recognized, and the problem of proper organization and regulation of judicial assistance has been several times the object of international agreements, both bipartite and multipartite.[10]

Whether prompted by an abstract idealism which recognizes that international solidarity calls for the protection of justice, or merely by the pragmatics of sheer political necessity, the Soviet Union follows the practice of non-communist states in this regard. Evidence of this is found in the national laws, as well as international agreements of the Soviets. Thus, Article 67 of the Code of Civil Procedure of the R.S.F.S.R. reads: "All communications of the courts with persons and authorities outside of the territory of the Union of S.S.R. are made through the People's Commissariat for Foreign Affairs." [11]

[7] *Cf.* T. A. Taracouzio, The Soviet Union and International Law, Ch. VI, pp. 123–164.

[8] Under the old Constitution of the Soviet Union the existing codes were those of the Union Republics, and not of the Union as a whole. The new Soviet Constitution of 1936 provides for promulgation of Union Civil and Criminal Codes, as well as for a Union Code on Civil and Criminal Procedure (Art. 14). Since, however, no such Union codes have been promulgated yet, those of the Union Republics continue to remain in force.

[9] *Sobr. Kodeksov R.S.F.S.R.*, p. 882.

[10] *Cf.* The Hague Convention of June 15, 1905, relating to Civil Procedure, Art. 8 (Br. & For. State Papers, 1905–1906, XCIX, p. 994). For the numerous bipartite agreements, see League of Nations Treaty Series.

[11] *Sobr. Kodeksov R.S.F.S.R.*, p. 890.

This general provision relating to civil procedure is clearly suggestive of the Soviet's acceptance of the principle of judicial assistance, and finds elaboration in the Circular of the People's Commissariat of Justice of the R.S.F.S.R. No. 92 of 1923:

> In addition to Circular No. 10, of 1922, the People's Commissariat of Justice hereby instructs all judicial and investigatory organs that in cases where there is need to ask a foreign state to execute some special requests (such as taking testimony, serving notices, etc.) all such requests be sent to the People's Commissariat of Justice, which will communicate with the respective foreign states through the People's Commissariat for Foreign Affairs.[12]

In all such instances, the judicial or investigating authorities must submit a special resolution indicating the substance of the case, names of the persons to be approached for testimony, the information desired, or the persons upon whom the notice is to be served, etc.

> At the same time, considering the fact that the execution of these requests by the authorities of foreign states at present is not regulated by special agreements, and that, therefore, the People's Commissariat for Foreign Affairs must send special requests to the respective states, the People's Commissariat of Justice prescribes that this resort [to judicial assistance] be made only in the most serious cases, when the court proceedings absolutely necessitate approaching a foreign state with such a special request.[13]

An exception to the rule set forth in the first clause of this circular was made in regard to the Far Eastern Region. The Circular of the People's Commissariat for Foreign Affairs No. 221 of 1924, provided:

> In view of the remoteness of the Far Eastern Region . . . district courts and attorneys in the Far Eastern Region have the right of communication in procedural matters with the authorities of neighboring foreign states not through the People's Commissariat for Foreign Affairs, but directly through the local agents and representatives of the People's Commissariat for Foreign Affairs. Likewise, district courts and attorneys must not refuse execution of commissions from neighboring states submitted through the agents and representatives of the People's Commissariat for Foreign Affairs. This rule will apply exclusively to commissions of investigation which are strictly local. In regard to matters touching upon issues *in principio*, or having all-republican or all-union importance, the

[12] *Ezhenedel'nik Sovetskoi Iustitsii*, No. 20, 1923, p. 477. Circular No. 10 of 1922 (*ibid.*, No. 8, 1922, p. 15) refers to the Soviet Decree of Sept. 9, 1920, stating that the Soviet authorities may communicate with foreign authorities only through the People's Commissariat for Foreign Affairs (*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1920, p. 396).

[13] *Ibid.* The substance of this circular was confirmed in the later Circular No. 85 of 1924 (*ibid.*, 1924, p. 570). *Cf.* also Circular of the People's Commissariat for Foreign Affairs No. 124 of Aug. 31, 1923 (11909/El), in Egor'ev i dr. *Zakonodatel'stvo i Mezhdunarodnye dogovory Soiuza S.S.R. i Soiusnykh respublik o pravovom polozhenii inostrannykh fizicheskikh i iuridicheskikh lits*, pp. 409–410.

rule outlined in the Circulars No. 92 of 1923, and No. 85 of 1924, shall be applied.[14]

From the language of Circular No. 92, already quoted, it appears that in matters of judicial assistance the People's Commissariat for Foreign Affairs serves merely as an intermediary agency through which letters rogatory reach their destination. It has no right of examination of the case *in substantio*, and is nothing but a delegated authority charged only with the duty of seeing that the execution of these letters takes place.

Two more circulars of the People's Commissariat of Justice are in point. The one (No. 64, 1925) on documents to be forwarded abroad, in its last clause instructs the courts to the effect that

> . . . in cases where the defendent is shown to be residing abroad . . . the courts should explain to the plaintiff that the judgment of the court in civil cases . . . in the absence of special conventions does not guarantee to the plaintiff the execution of the judgment abroad, and that such execution will depend on the discretion of the organs of the foreign state where it is to be carried out.[15]

Circular No. 235 of 1925 reads:

> 1. The instigation of requests for execution of commissions rogatory is possible exclusively in cases where this commission is to be executed by the courts of a state with which the U.S.S.R. is in normal diplomatic relations, or if it has concluded agreements therewith.
>
> 2. In cases where the execution of commissions is connected with some kind of time limit (such as court hearings, etc.) this time limit must be calculated so as to allow the correspondence to pass through the [necessary] series of organs. In particular this limit must be not less than one month in regard to Western States bordering the U.S.S.R., three months for other Western European States, four months for the Near Eastern States, and six months for the States in the Far East and transoceanic countries.[16]

The fact that the Soviets themselves resort to *lettres rogatoires* suggests that requests for judicial assistance may also be sent to them, although there is no explicit direction in Soviet laws that they are to be either accepted or executed. It is only from the language of the following circulars of the People's Commissariat of Justice that a positive assumption can be derived.

[14] Egor'ev, *op. cit.*, pp. 411–412.

[15] *Ezhenedel'nik Sovetskoi Iustitsii*, No. 12, 1925, p. 318.

[16] *Ibid.*, Nos. 48–49, 1925, pp. 1516–1517. *Cf.* also Circular of the People's Commissariat of Justice No. 140 of 1923 (*Ezh. Sov. Iust.*, No. 27, 1923, pp. 621–622), prescribing that the Soviet judicial organs will consider valid only those documents issued by the foreign authorities which have the *visés* either of the People's Commissariat for Foreign Affairs or of the Soviet representations abroad. In regard to this rule, attention must be called to Art. 58 of the Soviet Consular Code of 1929, which gives to the Soviet courts the right to accept, in separate instances, foreign documents without the *visés* of the People's Commissariat for Foreign Affairs or its organs, in which cases the acknowledgment of their validity is left entirely to the organs accepting them (*Sobr. Zak. i Rasp. S.S.S.R.*, I, 1929, § 567, pp. 1202–1203).

Thus

1. All petitions and complaints of individuals and institutions from abroad, irrespective of whether they are Soviet citizens or foreigners, are to be forwarded to the judicial organs of the R.S.F.S.R. only through the respective Soviet representatives abroad.

2. Direct correspondence (by avoiding the People's Commissariat for Foreign Affairs) of individuals and institutions from abroad, with the judicial organs of the R.S.F.S.R. is absolutely prohibited. In cases where such communications are received from private individuals not through the People's Commissariat for Foreign Affairs (for instance by mail), no action should be taken [and in case they are received from] institutions,—they must be forwarded to the People's Commissariat for Foreign Affairs.

3. Exemptions from the provisions of Cl. 2 are permissible only in extraordinary cases, when the information contained in the correspondence calls for action in the interests of the state. This must be placed on record in the respective files of the [receiving] judicial organs (such as instigation of court prosecution, etc.).

4. All petitions, complaints, etc., submitted or forwarded to the diplomatic representations (Cl. 1) must be duly paid, except in instances where this is not required by respective treaties and agreements with foreign states.

5. Communications received from abroad through the diplomatic representations of the U.S.S.R. are forwarded to the respective judicial organs of the R.S.F.S.R. through the People's Commissariat for Foreign Affairs and the People's Commissariat of Justice of the R.S.F.S.R.

6. Communications of the judicial organs in cases instigated in the above manner by individuals and institutions from abroad, must be sent also exclusively through the People's Commissariat of Justice and the People's Commissariat for Foreign Affairs, and in strict conformity with the rules set forth in the Circulars of the People's Commissariat of Justice No. 92 of 1923, and Nos. 188 and 189 of 1924.[17]

Circular No. 94 of 1929, on the fees for the execution of *commissions rogatoires*, gives the following table:

1. For the execution of commissions rogatory for foreign states having diplomatic relations with the U.S.S.R., a special fee is paid to the R.S.F.S.R. to cover the expenses incurred for the execution of these commissions:

(a) for most simple cases, such as service of court notices, delivery of advertisements, and other documents—five dollars.

(b) for [commissions involving court actions] taking place in court proceedings (depositions of the parties, witnesses, etc.)—ten dollars.

(c) for more complicated commissions (investigation by experts, visit to the *locus* by the courts) the fee is to cover the actual cost, but not less than ten dollars, which must be forwarded with the *commission*

[17] *Ezhenedel'nik Sovetskoi Iustitsii*, No. 212, 1925, p. 1406. The last two circulars relate to judicial coöperation in criminal cases. (*Ibid.*, No. 20, 1923, p. 477, and No. 45, 1924, p. 1091, respectively. *Cf. supra.*)

rogatoire. The balance to be charged later after the determination of the actual cost.

2. Fees for execution of *commissions rogatoires* are not charged when this is so stipulated in the respective international agreements concluded between the U.S.S.R. and foreign states. Instances where the fees are not charged are made known by the People's Commissariat for Foreign Affairs. At present, fees are not charged for *commissions rogatoires* from Austria, Germany, and Latvia.[18]

3. Organs of the People's Commissariat for Foreign Affairs, upon receipt of a commission rogatory, shall determine which of the fees enumerated in the preceding chapter [*sic*] is to be made.

Organs of the People's Commissariat for Foreign Affairs are charged with the duty of collecting the fees for the *commissions rogatoires* to be forwarded to the judicial organs, but in exceptional cases the People's Commissariat for Foreign Affairs has the right to advance these fees prior to the payment [from abroad], provided it be collected subsequently, and to exempt incidental commission from the fees [altogether].[19]

Thus, the national laws of the U.S.S.R. in regard to judicial assistance show that this assistance is accepted in the Soviet practice. The principle of reciprocity being obviously essential, for the Soviets this assistance is possible only with states having normal diplomatic relations with the U.S.S.R. The only difference between the Soviets and other countries in this regard is of a technical nature. While other states permit the transmission of letters rogatory directly to their courts, the practice in the Soviet Union is that the People's Commissariat for Foreign Affairs acts as a channel for the transmission of letters rogatory issuing out of courts in foreign countries.[20] Doubts may arise in regard to the execution of *commissions rogatoires* when they conflict with what is technically called *ordre publique*. The fact that interpretation of the latter depends usually on the political ingenuity of those resorting to this technicality, readily affords for the Soviets a good ground for rejecting judicial assistance, and in this respect the provisions of Articles 2 and 4 of the Hague Convention on Judicial Assistance of 1905, dealing with the principle of *ordre publique*, may well be kept in mind.[21]

A few words remain to be said about the Soviet treaties on judicial assistance. There are three agreements found in the Soviet records specifically envisaging mutual coöperation in the administration of civil law: with Austria, of September 19, 1924, with Latvia, of June 2, 1927, and with Estonia,

[18] See *infra*.

[19] *Ezhenedel'nik Sovetskoi Iustitsii*, No. 29, 1929, p. 688.

[20] *Cf.* Cl. 1 of Art. 1 of the Decree of Aug. 27, 1926: "Communications of the state organs and officials of the Union of S.S.R. and of the Union Republics with the foreign state organs and officials are carried out through the People's Commissariat for Foreign Affairs (*Sobr. Zak. i Rasp. S.S.S.R.*, I, 1926, p. 1018). Also: Earlier Decree of Sept. 9, 1920, to the same effect (*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1920, p. 386) and Circular of the People's Commissariat of Justice No. 10 of 1922, prescribing this rule for strict observation by the courts (*Ezhenedel'nik Sovetskoi Iustitsii*, No. 8, 1922, p. 15).

[21] Br. & For. State Papers, 1905–1906, XCIX, p. 994.

of January 20, 1930.[22] While all of them are agreements on "judicial assistance in civil cases," the agreement with Austria differs on two points from the other two (which are identical). Thus, while in the agreement with Austria the fee for the execution of *commissions rogatoires* is set at 50 cents (Article 8),[23] the other two agreements provide that no charges be made for judicial assistance. Then there is no provision in the agreement with Austria suggestive of the principle of *ordre publique,* while Articles 9 in the other treaties read: "Execution of requests for services of notices and for execution of *commissions rogatoires* may be refused if the state in whose territory this execution must take place considers it as endangering its sovereign rights or its safety . . ."

On November 22, 1935, the United States Ambassador to the Soviet Union, and the People's Commissariat for Foreign Affairs of the U.S.S.R. exchanged notes on the execution of letters rogatory. In regard to the issues touched upon hereinbefore, it is only fitting to point out that in the letter of Mr. Litvinov the Soviet's attitude toward judicial assistance is once again substantiated. Thus, Article 1 provides that "Letters rogatory issuing out of courts in the United States for execution in the U.S.S.R. should be delivered through the diplomatic channel. . . ." As to the fees, Article 5 provides: "Depending upon the nature of the letters rogatory, a fee varying from five to ten dollars ($5 to $10) will be charged for the execution of letters rogatory issued out of court in the United States . . ." Finally, according to Article 8: "The execution of letters rogatory issuing out of a court in the United States may be refused in whole or in part, if the appropriate authorities in the U.S.S.R. consider that the execution thereof would affect its sovereignty or safety." [24]

So much for the Soviet practice in regard to judicial assistance, in the narrow sense of the term. The last aspect of judicial coöperation in civil cases—the execution of judgments—is the least touched upon in Soviet records.[25] The recognition of the validity of the judgments of foreign courts has become a general rule in international law and relations. International comity has even extended in some instances to the practice of executing judgments rendered abroad.[26] Since, however, the execution of such judgments admittedly presupposes not only a common social basis of laws in the countries concerned, but also complete confidence in foreign courts of law and identity of the purposes pursued by justice, it may be expected that the execution of judgments of foreign "capitalistic" courts in the "proletarian" U.S.S.R. could hardly take place. Yet, the note to Article 255 of the Civil Procedure Code of the

[22] *Sborn. Deistv. Dogov.*, II, 1925, p. 32; IV, 1928, p. 31; and VI, 1931, p. 16, respectively.

[23] Cl. 2 of Circular of the People's Commissariat of Justice of the R.S.F.S.R. No. 94 of 1929, states that no fees are charged from Austria (*supra*, note 19).

[24] Executive Agreement Series, No. 83, pp. 4–5.

[25] See Note 1.

[26] *Cf.* several agreements of the non-communist states, found in the League of Nations Treaty Series.

R.S.F.S.R reads: "The procedure for the execution of the judgments of foreign courts is determined by special agreements with the respective countries." [27] This means two things: Firstly, the Soviets deem it possible for themselves sometimes to surrender their theories to the dictates of political expediency and to coöperate with foreign states to the extent of executing the judgments of non-communist courts. Secondly, this coöperation is possible only when there are agreements to that effect. Not counting several special agreements on arbitration and arbitral tribunals, or settlement of disputes in boundary zones [28] which are specific in their nature and do not cover the principle of execution of judgments in general, the Soviet records reveal only four agreements touching upon the issue under discussion here. The earliest is the convention between the R.S.F.S.R. and Estonia, of September 17, 1920, relating to through railway traffic of passengers and goods. This was followed by a similar convention with Latvia of February 26, 1921. Articles 57 of the former, and 54 of the latter, are identical and read as follows:

> The judgments which have been rendered, either after both parties have been heard, or by default, by the competent judge, in virtue of the provisions of the present regulations, shall, when they have become executory in virtue of the laws applied by the competent judge, be declared executory in each of the other contracting states, as soon as the formalities required in that state have been complied with, but without revision of the question *in substantio* . . .[29]

On October 29, 1925, these two were superseded by a new convention on the same matter between Estonia, Latvia, and the U.S.S.R. Paragraph 1 of Article 55 of this instrument incorporated *verbatim* the provisions of Articles 57 and 54, just quoted.[30]

The fourth agreement is the only convention concluded by the Soviets specifically on the execution of judgments. It is the convention with the Mongolian People's Republic which came into force on April 16, 1931.[31] The only reference to it is found in Circular of the People's Commissariat of Justice No. 48 of 1931, containing instructions to the courts in regard to the application of the provisions contained therein:

> In applying the convention between the U.S.S.R. and the Mongolian People's Republic in regard to the execution of judgments in certain civil cases, which came into force on April 16, 1931, the judicial organs of the R.S.F.S.R. must be guided by the following rules:

[27] *Sobr. Kodeksov R.S.F.S.R.*, p. 915; *cf.* also Circular of the People's Commissariat of Justice No. 64 of 1925 (*supra*, note 15).

[28] For list of them by countries, see T. A. Taracouzio, The Soviet Union and International Law, Appendix XXIV.

[29] *Sborn. Deistv. Dogov.*, I, 1922 (2nd ed.), p. 214, and III, 1922, p. 180, respectively.

[30] *Ibid.*, IV, 1928, pp. 185–186.

[31] The text of this convention being not available in the Soviet collections of treaties thus far published, the exact date of signing the same cannot be given.

A. In instances of decisions of courts of the R.S.F.S.R. to be executed in the Mongolian People's Republic:

1. In cases where the judgment of a court of the R.S.F.S.R. is to be executed in the territory of the Mongolian People's Republic, the plaintiff must file a petition with the court which rendered the judgment, asking to transmit the executory papers to the Mongolian People's Republic for execution.

2. The petition must state the nature of the execution, and in particular instances when money is to be collected, the amount of the same, to whom it belongs, and where it is located.

3. The filing of such petitions is allowed exclusively in the cases stipulated in Article 2 of the convention, namely:

(a) in cases involving maintenance of parents, children, and parties to marriage (alimony);
(b) in cases flowing out of damages done to government institutions, undertakings and civic organizations (embezzlement, theft, [illegal] appropriation, etc.);
(c) in cases involving labor relations;
(d) in cases involving collection of debts to the state banks of the U.S.S.R. and Mongolian People's Republic, as well as to the governmental coöperative and civic organizations of the U.S.S.R. and the Mongolian People's Republic.

4. Upon receipt of such petition, the court transmits it, together with executory papers, to the People's Commissariat for Foreign Affairs, which in its turn forwards them, provided no objections to so doing are found, to the Ministry of Justice of the Mongolian People's Republic.

5. After the execution of the judgment in the Mongolian People's Republic, the plaintiff will receive all information through the Soviet representative in the Mongolian People's Republic.

B. In instances of judgments of the courts of the Mongolian People's Republic to be executed in the R.S.F.S.R.:

6. Petitions for execution in the R.S.F.S.R. of the judgments of the courts of the Mongolian People's Republic are filed with the People's Commissariat of Justice of the R.S.F.S.R., or of the A.S.S.R.[32] These, upon verification that the judgment is subject to execution in the R.S.F.S.R. in conformity with the convention between the U.S.S.R. and the Mongolian People's Republic, transmit the correspondence to the court where the execution is to take place. Otherwise, they return the correspondence to the People's Commissariat for Foreign Affairs, giving motives for refusal [of execution] as prescribed in Article 3 of the convention.

7. Upon receipt of the said correspondence, the court orders the execution of the judgment by the appropriate organ [duly] charged with the execution of ordinary judgments (village Soviets, etc.).

8. In cases when the executory organ must have some additional information and data from the plaintiff, it communicates with the

[32] Presumably these letters connote *"Avtonomnykh Sovetskikh Sotsialisticheskikh Respublik,"* which means Autonomous Socialist Soviet Republics.

latter through the People's Commissariat for Foreign Affairs exclusively.

9. After the execution of the judgment, the executory organ notifies the People's Commissariat of Justice to that effect.

10. The transmittal to the plaintiff of property or money collected in virtue of the execution of the judgment takes place exclusively in conformity with the instructions of the People's Commissariat of Justice.[33]

It is difficult to voice a prediction as to the course which the Soviet practice in regard to this aspect of judicial coöperation may take in the future. From what has been said, it is apparent only that the principle of reciprocity, resort to diplomatic channels, and treaty provisions will play important rôles. It also appears certain that care will be taken by the Soviets that their authorities will never be placed in a position which would compel them to execute judgments of foreign courts which are contradictory to the Soviet conceptions of public order.

In conclusion, it may be of interest to mention briefly the execution in the R.S.F.S.R. of the judgments rendered in other constituent Republics of the Soviet Union. Reglementation of this problem is found in Circular of the Supreme Court of the R.S.F.S.R. No. 72 of December 3, 1923.[34] According to this circular, the executory letters issued by the judicial organs of the Union Republic are transmitted to the presiding judge of the district court within whose jurisdiction the execution is to take place. Upon satisfaction that the executory papers are issued by proper authorities and are in due form, the presiding judge inscribes on these papers his orders for execution, upon which the latter takes place in the prescribed manner. In cases, however, where the presiding judge of the district court discovers irregularities or contradiction of the judgment with the laws of the R.S.F.S.R., he either places the case on the agenda of the district court for examination of the judgment, or returns the executory letters to the plaintiff, giving motives for refusal of execution. Thus, the execution in the R.S.F.S.R. of the judgments of the courts of other Union Republics are conditioned here not only by examination of the formal aspects, but *in substantio* as well. This, in its turn, is a clear illustration of the fact that the Soviet principles regarding the inter-republican coöperation of the communist civil law within the bounds of the Soviet Union differ considerably from those underlying the Soviet participation in legal coöperation on an international scale.

[33] *Ezhenedel'nik Sovetskoi Iustitsii*, No. 14, 1931, p. 31.
[34] *Ibid.*, No. 49, 1923, pp. 1149–1150.

EDITORIAL COMMENT

QUESTIONS OF INTERNATIONAL LAW IN THE SPANISH CIVIL WAR

Several important questions of international law have been raised by the armed struggle now going on in Spain. It may be remarked at the outset that the contest has the character of both a "rebellion" and a "civil war." It began on July 17 as an "insurrection," led by General Franco, Commander of the Spanish Foreign Legion in Morocco, against the established legitimate government. As the "insurrection" spread to Spain and acquired the proportions of an armed contest on a large scale it became a "rebellion."[1] Its character as a "civil war" is derived from the fact that it is a struggle in which the contending parties are people of the same state, that is, it is an interfratricidal or internecine war.[2] In case the insurrection succeeds it will go down in history as a "revolution." Since the belligerency of the insurgents does not appear to have ever been formally recognized either by the Spanish Government or by any third Powers—certainly not before November 1936—the struggle did not acquire the character of a "war," in the technical or legal sense of the term, at least not prior to the latter date. The status of those arrayed against the government was therefore that of insurgents rather than belligerents. Nevertheless, it is admitted by all writers on international law that as insurgents they had certain limited rights for the purpose of carrying on the war—rights which belong equally to recognized belligerents,[3] and in general the rules of international law governing the conduct of war in the technical sense apply equally in case of an insurrection. Certainly the statement of Fauchille, that the conduct of civil war is not governed by the same laws that apply in international war,[4] cannot be accepted—at least not without qualification. Consequently such reported acts as the wanton killing of hostages and prisoners and the indiscriminate dropping of bombs upon private houses and the non-combatant population during the present contest was as much contrary to international law as they would have been had the struggle been a war in the technical sense.

An important question of international law raised during the present contest is that raised by the conduct of Germany and Italy in assisting the

[1] Compare the distinction made by Lieber, "Instructions for the Government of Armies of the United States in the Field," Articles 149 and 151, and Hyde, International Law, Vol. 2, p. 193.

[2] Rougiers' criticism (*Les Guerres Civiles et le Droit des Gens*, p. 18) of Pufendorf's and Martens' definition of a civil war as a contest between members of the same state but that it is rather a war between a state and certain portions of its population, is a fine distinction more technical than practical.

[3] Hershey, Essentials of International Public Law and Organization (rev. ed.), p. 203; Wilson, "Insurgency and International Maritime Law," this JOURNAL, Vol. 1 (1907), p. 56; and the decision of the U. S. Supreme Court in the case of the *Three Friends*, 166 U. S. 1.

[4] *Traité de Droit International Public*, t. II, *Guerre et Neutralité* (1921), p. 11.

insurgent forces, and particularly in supplying them with bombing planes (some of which appear to have been manned by German and Italian pilots), tanks, armored trucks and machine guns, or permitting their nationals to do so. That such assistance was rendered the insurgents on a considerable scale there is much evidence, although the German and Italian representatives at the meeting in London of the international committee on non-intervention in Spain denied the truth of the accusations. Portugal also rendered substantial assistance to the insurgents by allowing its territory and ports to be made a base for the importation and dispatch to Spanish territory of munitions and implements of war for the use of the rebel forces. In notes addressed to the governments of these three countries by the Spanish Government on September 15, a protest was made against the rendering of such aid to the insurgents, and the Spanish Minister of Foreign Affairs laid before the Secretariat of the League of Nations detailed evidence in support of the charge. Is such aid legitimate under the generally recognized rules of international law? It is believed that the answer must be in the negative.

The Government of Spain, for the overthrow of which this aid was intended, was the established legitimate government of the country, whatever might be said in criticism of its character or policies. It had been set up in conformity with the constitution and laws of the country and as a result of free popular elections. It had been recognized by all the other Powers, including Germany, Italy and Portugal, as the *de jure* government, and continued to be so recognized by all of them, at least during the first three months of the insurrection when the assistance complained of was being rendered. Juridically, therefore, the aid furnished by the three Powers mentioned to the rebels arrayed against the Spanish Government was an act of intervention of a kind which cannot be justified on the ground of self-preservation, protection of nationals, or any of the other reasons commonly recognized as justifying intervention by one state in the internal affairs of another state.

The outbreak of insurrection in a state has no effect on its juridical status as a member of the international community. It does not alter the duty of non-intervention in its affairs which other states are under. It confers no right of intervention upon them which they did not have prior to the outbreak of the insurrection. No question of neutrality is involved because neutrality is a status which is created only when war in a technical sense exists, that is, where, in the case of civil war, the belligerency of the insurgents has been recognized. Until then the status of other Powers is that of non-intervening states, not that of neutrals.

The conclusion of the whole matter is that the assistance furnished the Spanish rebels by Germany, Italy and Portugal, assuming of course that the charges of the Spanish Government against them are true, is an act of unjustifiable intervention in the internal affairs of Spain for which they may be held responsible in case the insurrection fails and the present government remains in power. This view is in accord with the conclusions of the In-

stitute of International Law as expressed in its *projet* on the rights and duties of foreign Powers as regards established and recognized governments in case of insurrection, adopted at Neuchâtel in 1900. Among the obligations of foreign Powers in respect to the legitimate government which the Institute's *projet* enumerates is the duty "not to furnish to the insurgents either arms, munitions, military supplies or financial aid" or to "allow a hostile military expedition against an established and recognized government to be organized within their domains." [5] Among the jurists who supported the resolutions were Holland, Westlake, Rolin-Jaequemyns, Pierantoni, Brusa, Renault and Von Bar. This also appears to be the view of all reputable text-writers who have discussed the subject, among whom may be mentioned Rougier,[6] Hyde,[7] Oppenheim,[8] Weisse,[9] Féraud-Giraud,[10] Fiore,[11] and La Pradelle.[11a]

If it be said that the duty of non-intervention has reference only to the conduct of governments in directly assisting the rebels and has no application to the conduct of private individuals, it can be said in reply that this distinction, if it was ever applicable in civil wars, is now antiquated, and is today repudiated by the best writers on international law, and has been rejected by the most recent legislation, such as the American neutrality legislation of 1935 and 1936.

Finally, if it be said that Russia and possibly France have rendered the same sort of assistance to the Spanish Government, and consequently Germany and Italy cannot be justly reproached for having assisted the rebels or for having permitted their nationals to do so, it can be said in reply that this argument ignores the sound distinction between the rights and duties of a state *vis-à-vis* the recognized legitimate government of another state and rebel forces engaged in the effort to overthrow it. There is no rule of international law which forbids the government of one state from rendering assistance to the established legitimate government of another state with a view of enabling it to suppress an insurrection against its authority. Whether it shall render such aid is entirely a matter of policy or expediency and raises no question of right or duty under international law. If assistance is rendered to the legitimate government it is not a case of unlawful intervention as is the giving of assistance to rebels who are arrayed against its authority. Assuming, therefore, that the Government of Russia rendered military or financial assistance to the Spanish Government, and that the Government of

[5] 18 *Annuaire de l'Institut*, p. 227.

[6] *Les Guerres Civiles et le Droit des Gens* (1903). See p. 83 ff. where the whole matter is discussed in great detail.

[7] 2 International Law, p. 782. [8] 2 International Law (5th ed.), p. 524.

[9] *Le Droit International Appliqué aux Guerres Civiles* (1898).

[10] "*La reconnaissance du belligérance dans les Guerres Civiles*," 3 *Revue Générale de Droit International Public* (1896), p. 277 ff.

[11] International Law Codified (trans. by Borchard), Sec. 1468.

[11a] "*Les Événements d'Espagne*," 18 *Revue de Droit International* (July–Sept., 1936), p. 165 ff.

France knowingly permitted its nationals to do likewise, both governments acted within their right under international law and their conduct afforded no legal justification for the action of other governments in assisting the rebels. This is not intended to be an expression of opinion on the merits of the Spanish insurrection or upon the moral or political aspects of the cause for which the insurgents are fighting; it is simply a juridical conclusion based on the rules of international law applicable to the case and involves no expression of sympathy for one side or the other.

It is believed that the Government of the United States adopted the view required by international law when, during the course of an insurrection in New Granada in 1862, Secretary Seward said: "It [the United States] regards the government of each state as its head until that government is effectually displaced by the substitution of another. It abstains from interference with its domestic affairs in foreign countries, and it holds no unnecessary communication, secret or otherwise, with revolutionary parties or factions therein." [12] It is believed also that the conduct of the Government of the United States during the present insurrection in Spain has been in accord with the proper conception of the duty of all foreign states toward the Spanish Government. Although the American Government had no authority under the Neutrality Resolution of February 29, 1936, to place an embargo on the shipment of munitions of war to Spain, since that Act applies only to international wars, and although it was not a party to the agreement for non-intervention in Spain, the government used strong moral pressure to prevent American manufacturers and exporters from sending such supplies to either of the contending forces in Spain, and it does not appear that the Munitions Control Board has issued any licenses for such exports since the outbreak of the insurrection or that in fact there have been any shipments. On August 7 Acting Secretary of State Phillips dispatched telegraphic instructions to all American consular representatives in Spain informing them that "in conformity with its well established policy of non-interference with internal affairs in other countries, either in time of peace or in the event of civil strife, this government will, of course, scrupulously refrain from any interference whatsoever in the unfortunate Spanish situation." [13]

There is a popular belief, and it apparently has the support of some text-writers, that when the belligerency of rebel forces has once been recognized and the struggle has passed from a state of insurgency to a state of technical war, the rights of the recognizing Power *vis-à-vis* the rebel forces undergo a change. This is an error. Both the contending forces acquire a new status

[12] Dispatch to Mr. Burton, Oct. 25, 1862. 6 Moore, Digest of International Law, p. 20. See also the strong statement of Charles Francis Adams to Earl Russell in 1865 (1 *ibid.*, p. 188) where he said among other things "Whenever an insurrection against the established government of a country takes place, the duty of governments . . . appears to be, at first, to abstain carefully from any step that may have the smallest influence in affecting the result."

[13] Text in New York Times, Aug. 23, 1936.

as a result of recognition and certain additional rights which they did not have prior thereto, but the recognizing state itself acquires no new rights so far as its relations with the insurgents are concerned. Its duty changes from that of non-intervention on the side of the insurgents to that of neutrality in respect to both belligerents. It loses the right which it had during the period of insurgency to assist the legitimate government and henceforth must treat both belligerents alike. From that time on it cannot assist either party without violating its duties of neutrality. It can no more render aid to the former insurgents without violating the law of neutrality than it could have aided them before recognition without violating the law of non-intervention. If recognition of belligerency conferred on the recognizing state the right to aid the insurgents, all Germany or Italy would have needed to do in the present struggle to legalize their assistance to the rebels would have been to recognize their belligerency. Within a few weeks after the insurrection began it had acquired a magnitude and an organization which would have legally justified any foreign government in recognizing a state of belligerency had it desired to do so.[14] But it does not appear that up to the present any European government has formally at least recognized the belligerency as such of the Spanish insurgent military forces. The news dispatches report that Guatemala, Salvador, Germany and Italy in November recognized the insurgent organization as the *de facto* if not the *de jure* government of Spain. At the same time the Italian Government withdrew its diplomatic representative accredited to the legitimate government of Spain and appointed a chargé d'affaires to the government set up by the Franco régime. This is not a recognition of belligerency but a recognition of the insurgent Power as a member of the international community. It goes much further, therefore, than a recognition of the existence of a status of belligerency. There is a distinction between the recognition of the belligerency of the two contending parties and the recognition of the rebel organization as the *de facto* government of the country. Recognition of belligerency is a declaration of intention on the part of the recognizing government to treat both parties alike and in fact it is usually in the form of a neutrality proclamation. Recognition of one of the parties as the established government is a very different matter. It is the antithesis of neutrality. If the usual tests laid down to justify recognition of this kind are applied in the present case, the legitimate government will undoubtedly be justified in considering it as premature and therefore as being an act of unjustifiable intervention.[15] The Spanish Government was therefore legally justified when, in a telegram addressed to the League of Nations, it declared the recognition by Germany and Italy of the rebel organization as the *de facto* government of the country to be an act of aggression

[14] See a statement of the conditions which are deemed to justify recognition of belligerency, as formulated by the Institute of International Law in its Neuchâtel *projet*, 18 *Annuaire*, p. 229; Rougier, *op. cit.*, p. 384, and Hershey, *op. cit.*, p. 203.

[15] As to these tests, see Hershey, *op. cit.*, p. 207 ff.

against the Spanish Republic.[15a] Had Great Britain during the American Civil War, instead of recognizing the belligerency of the Southern Confederate Government, recognized it as the *de facto* government of the United States, it certainly would have been regarded by the government at Washington as an act of intervention and probably a cause for war. But even assuming that recognition of the Franco régime as the *de facto* government of Spain carried with it a recognition of the belligerency of the insurgent forces, it did not create a right on the part of the recognizing governments to furnish them aid, because it would be a violation of the obligations of neutrality which they assumed by the act of recognition. It may be observed that, in addition to their duties as neutrals, Germany and Italy are also bound by their obligations as members of the non-intervention committee referred to above not to intervene on behalf of the rebel forces.

One of the advantages which insurgents acquire as a result of recognition of their belligerency, in case they possess naval forces, is the right to blockade the ports and coasts in possession of the legitimate government. It is admitted by all writers on international law, and this view is confirmed by abundant practice, that prior to the acquisition of the status of belligerency they have no such right. When, therefore, the British Government was informed on November 17 by the insurgent authorities of their intention to prevent in the future the importation through the port of Barcelona of munitions and implements of war for the benefit of the government forces, and was warned that unless all foreign ships in the harbor left within a very short time they would be exposed to the danger of destruction or damage, apparently from bombardment, the question was raised in the House of Commons whether this interference with foreign shipping in the port of Barcelona, which was understood to be tantamount to a blockade by the insurgents, could be regarded as lawful, considering that their belligerency had never been recognized either by Great Britain or the Government of Spain. In the House a question was put to Mr. Eden whether interference with foreign vessels by the naval forces of unrecognized insurgents would not be acts of piracy. Mr. Eden, without answering categorically the question, stated that a distinction must be made between interference with British ships on the high seas and interference with them in port. Evidently the government being anxious to avoid taking a definite position at that time on the matter and without challenging the lawfulness of the insurgent blockade, the British Ambassador to Spain was requested to inquire of the insurgent commander, General Franco, as to his exact intentions and whether neutral safety zones could not be provided in the port of Barcelona, as had been promised in other ports, where foreign vessels might anchor under a guarantee of immunity from bombardment.[16] In case the measures adopted by the insurgents take the form of a blockade in the technical sense, the question may also be raised whether, if notification is not given to neutrals in accordance with practice

[15a] Text in New York Times, Nov. 28, 1936.

[16] New York Times, Nov. 19 and 20.

and the rules of the Declaration of London and a period allowed during which neutral vessels are allowed to leave, it could be regarded as a lawful blockade. A more important question still is whether the naval forces of the insurgents are sufficient to enable them to establish an effective blockade, especially if it should be extended to the entire coast of Spain under the control of the Madrid government. It may be doubted whether without the aid of foreign vessels they would be able to do so.

It was just at this juncture that Germany and Italy recognized the rebel government as the *de facto* if not the *de jure* government of Spain. Did this recognition have the effect of conferring upon the rebel authorities the right of blockade when neither the legitimate government nor those of any other European countries had done so? It may be doubted whether any such right was acquired as a consequence of German and Italian recognition, even assuming that their recognition of the rebel government was also a recognition of the status of belligerency. Whatever the facts as to this may be, it is unnecessary to examine the question since the British Government, as stated above, by the inquiry which it caused to be addressed to General Franco relative to the concession of safety zones for neutral ships in the roads leading to Barcelona, indicated that it would not contest the legality of the blockade—at least not if provision were made for such zones.

While the Spanish insurgents, so long as their belligerency was unrecognized, could not establish a lawful blockade of the enemy ports and coasts, the legitimate government had a right to blockade those in the possession of the insurgents even though the status of belligerency had never been recognized, provided the blockade were an effective one. The Spanish Government was therefore entirely within its rights when on August 20, 1936, it informed foreign governments that it had declared a war zone around certain ports in control of the insurgents on the Spanish peninsula, in Spanish Morocco and the Balearic Islands, in order that the governments so notified might give warning to their merchant vessels and "possible incidents be avoided." Construing the war zones as being in the nature of a blockade, since the Spanish note of August 20 had stated that foreign merchant vessels would not be permitted to enter the ports situated within the said war zones, the Secretary of State of the United States on August 25 instructed Mr. Wendelin in charge of the American Embassy at Madrid to inform the Spanish Government that the United States could not admit "the legality of any action on the part of the Spanish Government in declaring such ports closed unless that government declares and maintains an effective blockade of such ports." The instruction added that in taking this position the Government of the United States was "guided by a long line of precedents in international law with which the Spanish Government is familiar." [17] While the United States has never formally adhered to the Declaration of Paris of 1856 which lays down the rule that a blockade to be lawful must be effective, it had acted in ac-

[17] Text in New York Times, Aug. 27, 1936, p. 2.

cordance with the rules of the Declaration during its own civil war and the war with Spain in 1898. In fact as early as 1834 during the Don Carlos insurrection when the Spanish Government had declared a blockade of a certain part of the coast of Spain, the Secretary of State informed the Spanish Government that the United States "cannot acknowledge the legality of any blockade which is not confined to particular designated ports, each having stationed before it a force competent to sustain the blockade." [18] On other occasions the American Government has declared its unwillingness to recognize the legality of ineffective blockades,[19] and the rule maintained by the United States is now regarded as a well-settled one in international law.[20] In the present case the Secretary of State did not actually deny the effectiveness of the Spanish blockade, but having good reason to believe that the naval forces of Spain were insufficient to maintain an effective blockade of the ports mentioned in the Spanish note, he wished to serve notice on the Spanish Government that the United States would not recognize its validity in case it should turn out to be ineffective. In adopting this position the Government of the United States did not of course depart in any degree from the policy of non-interference in the internal affairs of Spain which had already been declared by Acting Secretary of State Phillips on August 7.

The question may be raised in this connection whether the action of the Spanish Government in declaring a blockade of certain ports and coasts held by the insurgents did not have the effect of a recognition by it of the belligerency of the insurgent forces from which they derived the right to institute a blockade of the coastal territories in the possession of the government forces. If so, the doubt expressed in the British House of Commons regarding the unlawfulness of the rebel blockade was not well founded. It will be recalled that when, in 1861, the Government of the United States complained of the alleged premature recognition of the belligerency of the Southern Confederacy, the Government of Great Britain replied that President Lincoln's proclamation of April 19, 1861, instituting a blockade of certain Southern ports, was in effect a recognition of the belligerency of the Confederacy which fully justified British recognition.[21] If the establishment of a blockade by the Spanish Government involved a recognition by it of the belligerency of the insurgent Power, it would seem that thereafter the insurgents had as good a right to employ the weapon of blockade as did the opposing party, and this quite independently of whether other governments had or had not recognized a state of belligerency.

JAMES W. GARNER

[18] Note of Nov. 18, 1834, of Mr. Forsyth to Chevalier Tacon. 7 Moore, Digest, p. 803.
[19] *Ibid.*, p. 797 ff.
[20] 2 Hyde, *op. cit.*, p. 647 ff.; 2 Oppenheim, *op. cit.*, p. 635 ff.; and Garner, Prize Law During the World War, p. 625 (for a summary of the jurisprudence).
[21] Hershey, *op. cit.*, p. 207, and 1 Moore, Digest, p. 184 ff.

THE UNITED STATES AND THE SPANISH CIVIL WAR

The attitude of the Government of the United States toward the civil war which has been raging for some months in Spain, was stated to be that of "maintaining a completely impartial attitude" in an instruction sent on August 7 last by the Acting Secretary of State, Mr. William Phillips, to all representatives of the United States in Spain. In this instruction, Mr. Phillips summed up the Government's position as follows:

> It is clear that our Neutrality Law with respect to embargo of arms, ammunition and implements of war has no application in the present situation, since that applies only in the event of war *between or among nations.* On the other hand, in conformity with its well-established policy of non-interference with internal affairs in other countries, either in time of peace or in the event of civil strife, this Government will, of course, scrupulously refrain from any interference whatsoever in the unfortunate Spanish situation. We believe that American citizens, both at home and abroad, are patriotically observing this well-recognized American policy.[1]

As this issue of the JOURNAL goes to press, the Department of State has made public a telegram sent December 29 to the American Embassies in Paris, London, Berlin, Rome, Moscow, and Valencia, explaining that the Department had, with great reluctance, issued a license for the exportation of a shipment of airplanes and engines to the port of Bilbao in Spain, which is the principal port of entry held by the forces of the Spanish Government. The American diplomatic representatives were authorized to bring the facts in the Department's telegram orally to the attention of the governments to which they were accredited. The Department's telegram reads as follows:

> The Department yesterday found itself obliged to grant two licenses for the exportation to the port of Bilbao in Spain of a shipment of airplanes and engines to the total value of $2,777,000. As you recall the joint resolution of Congress now in effect providing for an embargo against the shipment of arms, ammunition and implements of war to "belligerent countries" does not apply to the present civil strife in Spain as it is applicable to wars between nations. The present authority for the issuing of licenses contains the following provision: "Licenses shall be issued to persons who have registered as provided for except in cases of export or import licenses where exportation of arms, ammunition or implements of war would be in violation of this Act or any other law of the United States or of a treaty to which the United States is a party, in which cases licenses shall not be issued." As none of these exceptions exist in the case of the Spanish situation the right to a license could not be denied.
>
> Since the beginning of the disturbance in Spain many inquiries have been received as to the attitude of this Government toward shipments of arms, ammunition and implements of war, including aircraft, to Spain. Heretofore in all such cases the inquirers have patriotically refrained from requesting licenses for such shipments upon receiving an explana-

[1] Department of State Press Release, Aug. 11, 1936.

tion of this Government's attitude and policy of scrupulous non-intervention in the Spanish situation. Thus with the coöperation of arms manufacturers and exporters this Government has so far been able to carry out its policy of non-interference in the Spanish situation. Mr. Robert Cuse insisted upon his legal rights in the face of an explanation of this Government's non-involvement policy and with full understanding thereof. The Department sincerely regrets the unfortunate non-compliance by an American citizen with this Government's strict non-intervention policy.

In view of the fact that most of the airplanes and airplane engines and parts composing the shipment, licenses for which have been granted as mentioned above, are not of new manufacture and will therefore require overhauling and reconditioning, it is not expected that any of this shipment will leave the United States during the next two months and that the entire shipment will not be completed before six months from now.[2]

It is indeed an unusual occasion in the history of the United States that its Government should feel called upon to offer an explanation—and in an apologetic tone—of an exportation of war materials to another country. The novelty of this event can be pointed to without the slightest inference of disparagement of the policy of the United States towards wars in other lands, for from the very beginning of its national existence, this Government has taken the lead in formulating the laws of neutrality and non-intervention as they exist today. The contribution of the United States to the development of this branch of international law is well known and generously acknowledged.[3]

The Neutrality Act passed by the United States Congress on June 5, 1794, revised and supplemented from time to time to meet conditions arising out of foreign wars, and also out of insurrections in America, provides a code of legislation to enable the United States to fulfill its obligations under international law and generally to preserve friendly relations with other governments.[4] The trade by private citizens in munitions of war not being prohibited by international law, and being subject only to the risk of capture and confiscation by the enemy, the United States had never enacted a general prohibition of such trade. The Government of the United States has consistently upheld the right of its citizens to engage in the trade as permitted by international law, and its diplomatic correspondence is filled with the defense of this right by American Secretaries of State.

As indicated by the present announcements of the Department of State, the provision of the Neutrality Act of 1935, amended and extended to May 1, 1937, forbidding the export of war materials to two or more nations at war, is

[2] State Dept. Press Release, Dec. 30, 1936. On Jan. 5 the State Department made known that it was obliged to grant licenses to another exporter to ship war supplies valued at $4,500,000 to the port of Valencia, in the control of Spanish Government forces. Washington Post, Jan. 6, 1937.

[3] See, for example, the English author, Hall, International Law (8th ed.), pp. 515–16.

[4] The Code of Laws of the United States of America in force Jan. 3, 1935, Title 22, Chap. 5.

not involved in the shipment of the prohibited articles to Spain. But Section 2 of that Act enacts a permanent policy of governmental control over the exportation and importation of arms, munitions and implements of war. The execution of this section is vested in a National Munitions Control Board, of which the Secretary of State is the chairman and executive officer, and it is a provision of this section of the Act which the Department quotes as requiring it to issue licenses for the exportation of war materials to Spain.

An explanation of the official action of the Government in issuing such licenses was no doubt thought necessary because of the widespread resentment among the people of the United States of the part which many Americans believe the munitions merchants play in war, coupled with a strong popular feeling that the American trade in arms and munitions contributed to drawing the United States into the World War. The explanation was sent to foreign governments probably because the exportations permitted by the official licenses are contrary to the policy of coöperation of the President and the Department of State in the maintenance of international peace. Such an international coöperative policy was manifested by Secretary of State Stimson in 1932 when he went as far as he could under the treaties to which the United States is a party, to curtail the hostilities in Manchuria.[5] It was again strikingly manifested during the Chaco war, when, upon the recommendation of Secretary of State Hull, Congress enacted the Joint Resolution, approved May 28, 1934, by which the President was authorized to place an embargo upon arms and munitions of war to Bolivia and Paraguay, which he promptly did.[6] Secretary Hull's recommendation was made in response to a communication from the committee of the League of Nations appointed by the Council to find a solution of the Chaco dispute. In his letter of May 22, 1934, addressed to the Chairman of the Committee on Foreign Affairs of the House of Representatives, Mr. Hull stated: "The United States should be willing to join other nations in assuming moral leadership to the end that their citizens may no longer, for the sake of profits, supply the belligerent

[5] On January 6, 1933, Secretary Stimson recommended that Congress be requested to "confer upon the President authority in his discretion to limit or forbid, in coöperation with other producing nations, the shipment of arms and munitions of war to any foreign State when in his judgment such shipment may promote or encourage the employment of force in the course of a dispute or conflict between nations." In support of this recommendation Secretary Stimson added: "There are times when the hands of the Executive in negotiations for the orderly settlement of international differences would be greatly strengthened if he were in a position in coöperation with other producing nations to control the shipment of arms. The United States should never, in justice to its own convictions and its own dignity, be placed in such a position that it could not join in preventing the supply of arms or munitions for the furtherance of an international conflict while exercising its influence and prestige to prevent or bring to an end such a conflict." (Senate Document No. 169, 72d Cong., 2d sess.) President Hoover transmitted this recommendation to Congress on January 10, 1933, but all general legislation on this subject failed until the enactment of the Neutrality Law of Aug. 31, 1935. For a summary of the action of Congress on President Hoover's recommendation, see Editorial Research Reports, 1933, Vol. 1, pp. 344–348.

nations with arms and munitions to carry on their useless and sanguinary conflict." [7]

The Neutrality Law of 1935 [8] was hastily enacted during the Italo-Ethiopian war in response to an overwhelming demand that the United States remain neutral in future European wars. The law as enacted was insufficient to enable the United States Government to coöperate as fully as some of the European Foreign Offices wished in the application of the League of Nations' sanctions against Italy. It will be recalled that Congress, when passing the Act of 1935, declined to vest authority in the President to prohibit the exportation to belligerents of raw materials essential for the prosecution of war, but the President when issuing his proclamation on October 5, 1935, placing an embargo upon the exportation of arms, ammunition and implements of war to Italy and Ethiopia as authorized by the Neutrality Act, at the same time made a statement which contained a warning "that any of our people who voluntarily engage in transactions of any character with either of the belligerents do so at their own risk." [9] The President amplified this warning on October 30, 1935, in the course of which he made the following statement:

> This Government is determined not to become involved in the controversy and is anxious for the restoration and maintenance of peace.
>
> However, in the course of war, tempting trade opportunities may be offered to our people to supply materials which would prolong the war. I do not believe that the American people will wish for abnormally increased profits that temporarily might be secured by greatly extending our trade in such materials; nor would they wish the struggles on the battlefield to be prolonged because of profits accruing to a comparatively small number of American citizens.[10]

The Secretary of State, also, as in the present case of non-prohibited shipments to Spain, used moral suasion with American exporters to make effective the Government's policy.[11]

[6] The Joint Resolution of May 28, 1934, reads as follows:

"That if the President finds that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reëstablishment of peace between those countries, and if after consultation with the governments of other American Republics and with their coöperation, as well as that of such other governments as he may deem necessary, he makes proclamation to that effect, it shall be unlawful to sell, except under such limitations and exceptions as the President prescribes, any arms or munitions of war in any place in the United States to the countries now engaged in that armed conflict, or to any person, company, or association acting in the interest of either country, until otherwise ordered by the President or by Congress." (U. S. Statutes at Large, Vol. 48, Pt. 1, p. 811.)

[7] Department of State Press Releases, May 26, 1934, pp. 301–303.

[8] Printed in this JOURNAL, Supp., Vol. 30 (1936), p. 58. The Joint Resolution of Feb. 29, 1936, amending and extending the law, is printed in the same volume, p. 109.

[9] Dept. of State Press Releases, Oct. 5, 1935, p. 255.

[10] Dept. of State Press Releases, Nov. 2, 1935, p. 338.

[11] *Ibid.*, Oct. 10 and 30, 1935, pp. 303, 339.

While the present case does not involve the coöperation of the United States with the League of Nations, it does happen to involve an American policy which conforms to a certain European policy with respect to Spain. This policy was formulated by France, with the support of Great Britain, and has for its object the prevention of the spread of the Spanish civil war into a general European conflagration through the intervention of other Powers. It involves the prohibition of "the exportation, direct or indirect, the reëxportation and transit, of arms, munitions and materials of war, as well as air craft, assembled or unassembled, and of all ships of war, destined for Spain, the Spanish possessions, or the Spanish zone of Morocco." Although all the governments of Europe have made declarations in conformity with this French proposal of August 15 last, which have been published and constitute the so-called "non-intervention agreement," [12] there has been but slight real agreement between France, Great Britain and Soviet Russia, on the one hand, and Germany, Italy and Portugal, on the other, because of important reservations made by the latter group. These three Powers objected to the French proposal on the ground that it did not go far enough to prevent foreign interference in Spain by prohibiting subscriptions of funds and the departure of volunteers for Spain. The French Government was apparently unable to accept these reservations because of popular sympathy in France for the Spanish Leftist Government. In this attitude, France was supported by the Government of Great Britain. The *London Times* dismissed the reservations of Germany, Italy and Portugal as a waste of time and as "making it harder for M. Blum to resist the arguments of many of his supporters that the legal government of Spain should be allowed to purchase arms and munitions in France." It observed: "The French are a democratic people; their sympathies are on the whole with the Spanish Left. If individual Frenchmen of the Popular or Unpopular Front decide to risk their skins in Spanish quarrels or to subscribe to the funds of either combatant, it is hard to see how their Government can be expected to do more than prevent the organized enlistment of volunteers and restrict subscriptions, as they seem willing to do, to those raised for humanitarian objects." [13]

An International Committee for the Application of the Agreement regarding Non-Intervention in Spain was set up in London, but it has been unable to do more than exchange information concerning the legislative and other measures taken by the participating governments to give effect to the non-intervention agreement.[14] There have been numerous charges before the committee of breaches of the agreement, with denials and counter-charges, while men and supplies have continued to pour into Spain to augment the forces of both sides. The foreign "volunteers" have become so formidable

[12] See texts in *L'Europe Nouvelle*, Sept. 26, 1936, Supplement. English texts of German and Italian replies are in the London Times, Aug. 19 and 22, 1936, and the Portuguese reply is in the London Times, Sept. 11, 1936.

[13] *Ibid.*, Aug. 15, 1936, p. 11.

[14] See British Parliamentary Command Papers, No. 5300.

that Great Britain and France are now reported to have reopened negotiations to prevent the continuance of this form of "non-intervention." [15]

The United States already has upon its statute books special legislation to discourage the fomenting and support from this country of insurrections in American countries and in China. Two days after the declaration of war by the United States against Spain in 1898, the Congress, on April 22, adopted a Joint Resolution authorizing the President, in his discretion, to prohibit the export of coal or other material used in war, from any sea-port in the United States.[16] That act was obviously a measure of self-defense to prevent supplies of coal and other war materials from reaching the Spanish fleet and armed forces in the Spanish possessions, but it was to remain in effect until otherwise ordered by Congress, and on October 14, 1909, it was invoked by President Theodore Roosevelt to prohibit the exportation of arms, ammunition and munitions of war of every kind, to the Dominican Republic, then in the throes of revolution.[17] During the prolonged revolution in Mexico, Congress enacted a new law, approved March 14, 1912, which read as follows:

> That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.

The law was amended on January 31, 1922, to include "any country in which the United States exercises extraterritorial jurisdiction." [18] It has been invoked on a number of occasions, but only to prevent arms from reaching revolutionary forces, except in the case of the Huerta Government in Mexico in 1914, when President Wilson lifted the embargo and allowed arms to be sent to Huerta's opponents.[19] On several occasions the United States Government has sold surplus army rifles, machine guns and ammunition to other American governments for use in suppressing revolutions. Such sales were made in 1917 to the Government of Cuba,[20] in 1921 to the Government of Nicaragua,[21] in 1923 to the Obregon Government in Mexico,[22] and again to

[15] Washington Post, Dec. 31, 1936, and Jan. 6, 1937. The replies of Germany and Italy to the new Franco-British proposals to curb the flow of foreign volunteers to Spain are printed in the New York Times, Jan. 8, 1937, p. 8. These governments reiterate the attitude taken in their replies to the original French proposal last August.

[16] United States Statutes at Large, Vol. 30, p. 739.

[17] For President Theodore Roosevelt's proclamation see Messages and Papers of the Presidents, Vol. XIV, p. 6968.

[18] The law as it now stands is reproduced in the Code of Laws of the United States of America, Title 22, Chap. 5, Sec. 236.

[19] See Editorial Research Reports, "Arms Embargoes and the Traffic in Munitions," Vol. I, 1933, No. 18, pp. 342–344.

[20] New York Times, Feb. 14, 1917, p. 1.

[21] *Ibid.*, Mar. 24, 1927, p. 1.

[22] *Ibid.*, Dec. 30, 1923, p. 1.

the Government of Nicaragua in 1927.[23] During President Harding's administration he refused a request of a European Government for the purchase of surplus American army rifles. In doing so, he wrote letters to the Secretary of War and the Secretary of the Navy in which he expressed the hope that it will be their policy "not only to make no sales of war equipment to any foreign power but that you will go further and make certain that public sales to our own citizens will be attended by proper guarantees that such supplies are not to be transferred to any foreign power." He added that he would "gladly waive aside any financial advantage that might attend such sales to make sure that none of our surplus equipment is employed in encouraging warfare any place in the world." [24]

In the application of the arms embargoes to China, Cuba, Honduras, and Nicaragua, the regulations of the Secretary of State covering the international traffic in arms require approval of the diplomatic representatives of those governments in Washington before permits for the exportation may be issued.[25]

The President, in his annual message delivered to Congress on January 6, 1937, requested "an addition to the existing Neutrality Act to cover specific points raised by the unfortunate civil strife in Spain." On the same afternoon, the Congress passed a Joint Resolution which provides

> That during the existence of the state of civil strife now obtaining in Spain it shall, from and after the approval of this resolution be unlawful to export arms, ammunition, or implements of war from any place in the United States, or possessions of the United States, to Spain or to any other foreign country for transshipment to Spain or for use of either of the opposing forces in Spain. Arms, ammunition, or implements of war, the exportation of which is prohibited by this resolution, are those enumerated in the President's Proclamation No. 2163 of April 10, 1936.[26]
>
> Licenses heretofore issued under existing law for the exportation of arms, ammunition, or implements of war to Spain shall, as to all future exportations thereunder, ipso facto be deemed to be cancelled.

The Joint Resolution was approved by the President on January 8, 1937, and went into effect at 12:30 p.m. on that day.[27]

It will be noted that this resolution is not an amendment of the Neutrality Act of 1935 nor of the Act of 1912 relating to civil strife. It is a law applicable to Spain alone and, in this respect, resembles the Joint Resolution of May 28, 1934, passed especially to cover the war in the Chaco, except that the present resolution concerning Spain does not require a Presidential proclamation to make the embargo effective. But the President is given authority to end the embargo by proclaiming that conditions which gave rise to it have ceased to exist.

[23] New York Times, Mar. 24, 1927, p. 1.
[24] President Harding's letters are in the New York Times, Dec. 30, 1923, p. 15.
[25] Department of State Publication No. 787, p. 17.
[26] Proclamation in Dept. of State Press Releases, April 18, 1936, pp. 311–313.
[27] Public Resolution No. 1, 75th Cong., 1st Sess.

Congress is apparently not ready to amend the Neutrality Act of 1935 so as to make it applicable to civil strife, nor the Act of 1912 covering domestic violence in American countries so as to make it applicable to revolutions in all countries of the world. GEORGE A. FINCH

BELGIUM AND NEUTRALITY

It is of first importance to a state that its territory be not invaded by the forces of any other. When that territory separates and constitutes the pathway between that of states which embark upon war against each other, the burden of maintaining inviolability is heavy and may prove to be insurmountable. The experience of Belgium during the World War is illustrative. Inasmuch as its territory afforded the army of a neighboring country an easy avenue of approach to a hostile objective, the temptation to seize the strategic advantage proved to be irresistible, and despite the prohibitions of the treaties of 1839,[1] Belgium found its domain invaded and occupied by the forces of a state which was one of the guarantors of its supposedly neutralized status. The experience caused Belgium to realize that its neutralized status, with all that neutralization implied, was an inadequate safeguard. Accordingly, it was led to share the common confidence of the Principal Allied Powers in the superiority and efficacy of a different plan. Belgium experienced little if any difficulty in securing from numerous other countries which had been parties to the treaties of 1839 acknowledgment that it should no longer be regarded as a neutralized state.[2] The policy exemplified in the organization of the League of Nations, with its ban upon wars, save under rare conditions when they were to be regarded as excusable, and with its arrangements for collective security for the benefit of a non-aggressive member guilty of no untoward conduct, seemed to offer a promising means of lessening the danger of future attacks upon Belgian soil. Moreover, a Belgium that was to participate in the common effort to maintain peace and even to penalize a Covenant-breaking belligerent seemed to be better off, and on the whole not more exposed to attack, than under the previous régime. It was perhaps natural that in September, 1920, the Belgian and French Governments through an exchange of notes gave approval to a so-called Military Understanding signed by their respective military representatives on September 7 of that

[1] See treaty concluded by Austria, France, Great Britain, Prussia and Russia with The Netherlands, De Martens, *Nouveau Recueil de Traités*, XVI, 770; treaty between Belgium and The Netherlands, relative to the separation of their respective territories, *id.*, 773; treaty concluded by Austria, France, Great Britain, Prussia and Russia, with Belgium, *id.*, 788. These treaties were signed on April 19, 1839.

[2] It is unnecessary here to discuss the method by which Belgium became free from the status from which it sought to be unshackled, notwithstanding the fact that certain parties to the treaties of 1839, such as The Netherlands and Russia, did not become parties to any arrangement acknowledging such a change of status. The attainment of that freedom did not necessarily imply or involve termination of the treaties in which the neutralization of Belgium had been registered.

month, the object of that understanding being "to reinforce the guarantees of peace and security resulting from the Covenant of the League of Nations." [3]

In the course of the following sixteen years, however, some conclusions in Europe as elsewhere underwent a change. Passing events made a deep impression; and none made a profounder one upon the Belgian mind than certain happenings in 1935 and 1936. The failure of the plan under the auspices and through the instrumentality of the League of Nations to safeguard one of its members from attack and complete subjugation, proved to be as severe a blow to confidence in that organization as a defender of territory as it was to Ethiopia which found itself stripped of its domain and its life extinguished by its enemy. Again, the Franco-Russian Agreement of Alliance concluded in 1935, which paved the way for the German denunciation in 1936 of the Locarno Pacts of October, 1925, and also for a German remilitarization of the Rhineland, regardless of the provisions of the Treaty of Versailles, warned the Belgians not only of the possibility of a Franco-German war, but also of the fate in store for their territory in the event of such a conflict, if Belgium were linked to one of the belligerents as its ally.

It was in the light of these conditions that the King of the Belgians expressed himself as he did to his Council of Ministers on October 14, 1936. He said in part:

> Our military policy, as well as our foreign policy, must be designed, not to prepare for a war, more or less victorious, as the result of a coalition, but to keep war from our territory. The reoccupation of the Rhineland, by ending the Locarno arrangement, has almost brought us back to our international position before the war.
>
> Our geographical situation enjoins it upon us to maintain a military establishment in order to dissuade any one of our neighbors from borrowing our territory to use in attacking another state. By fulfilling this mission Belgium renders a supreme service to the peace of Western Europe and thereby creates an *ipso facto* right for itself to the respect and eventual assistance of all states which have an interest in that peace. . . .
>
> Any unilateral policy weakens our position abroad and excites, rightly or wrongly, a division at home. An alliance, even if it is purely defensive, does not achieve its purpose because, however prompt might be the aid from our ally, it would come only after an onslaught by an invading army which would be devastating. In any event, we should have to struggle single-handed against that onslaught. . . .
>
> Without herself preparing a system of defense, capable of resistance, Belgium would find herself at the very beginning, deeply invaded and completely plundered. After this period, friendly intervention would be able, indeed, to ensure final victory; but the struggle would afflict the country with a ravage compared with which that of the war of 1914–1918 is but a feeble picture.
>
> That is why we must follow a policy exclusively and entirely Belgian. The policy must aim solely at placing us outside the quarrels of our neighbors. It corresponds to our national ideal. It can be maintained

[3] See League of Nations Treaty Series, Vols. 2–3, 128.

> by a reasonable military and financial effort, and it would command the support of all the Belgians, who are inspired by an intense and basic desire for peace.
>
> Let those who doubt the feasibility of such a policy consider the proud and resolute example of Holland and Switzerland. Let them recall how decisively Belgium's observance of the status of neutrality weighed in our favor and in favor of the Allies during the war and during the settling of accounts which followed. Our moral position would have been much weaker at home and the world would not have afforded to us the same sympathy if the invader had been enabled to advance as an argument an alliance between Belgium and one of its neighbors.[4]

These words mark the realization of two grim facts: first, that no military alliance will serve to ward off an initial attack upon, or invasion of, Belgian soil unless the ally undertakes itself at all times to make highly dangerous and futile such aggression, as by actively participating in all that the Belgian scheme of defense by land and air may entail, embracing activities and lodgments within Belgian territory; and secondly, that by shunning an alliance with any country, and by avowal of a determination to refrain from having any part in wars that may afflict its neighbors, those neighbors both lose the right and may relax the disposition to borrow Belgian soil for their own belligerent purposes.[5]

Important implications flow from this realization. Obviously, the adoption by Belgium of the course which it suggests calls for some spade work, involving appropriate efforts to obtain French acquiescence in the termination of any inconsistent commitment growing out of the Military Understanding of 1920, of which the terms have not been disclosed.[6] Again, there

[4] The writer acknowledges his indebtedness to His Excellency Count Robert van der Straten-Ponthoz, Belgian Ambassador at Washington, for the text of an authentic copy of the King's address. The English translation given above is chiefly that published in the New York Herald-Tribune, Oct. 15, 1936, p. 2.

It must be obvious that the King was far from suggesting the desirability of the resumption of a neutralized status for his country to be effected through the instrumentality of a multipartite agreement, and designed to reproduce a condition resembling that wrought through the agreements of 1839.

[5] The cutting off of that right in so far as it may be attributable to or derived from a Belgian alliance with the enemy of a possible or potential invader, and the weakening of that disposition greatly strengthen both in a military and diplomatic way the position of the sovereign that can boast of such an accomplishment.

[6] Declared the Manchester Guardian Weekly, Oct. 23, 1936: "When, in March of this year, Germany broke the treaty by marching into the demilitarised zone it was replaced by a temporary but binding agreement. By this Britain is bound to go to the help of either France or Belgium if they are attacked by Germany; France and Belgium are bound to go to the help of each other in the same case; but neither France nor Belgium is bound to go to the help of Britain. This agreement also would presumably be annulled by the acceptance of King Leopold's declaration, as well as the military arrangements between the Staffs of the three countries that were designed to strengthen the obligations then assumed.

"This agreement, however, was not meant to be permanent, but represented only an 'interim agreement' until a new pact should be negotiated for Western Europe. It was foreseen that should the negotiations to that end fail completely some such guarantee for

must be careful consideration of the extent to which Belgian obligations under the Covenant of the League of Nations would challenge, either in a practical or theoretical way, the freedom of Belgium to remain strictly neutral in the course of wars that might engage its neighbors, and also of the question whether such a challenge would be severe enough to justify the relinquishment of membership in that body. Doubtless these matters are receiving the benefit of the best thought to be had in Belgium.

There are other implications that result from the King's conclusions. If those conclusions are sound, it follows that any scheme of international organization which opposes or makes difficult the effort of a member state to refrain from taking sides in a war between other countries which are its neighbors and from so participating therein, is to such extent a menace to the inviolability of its territory. If they are sound, it follows that the price to be paid for the benefits accruing from a military alliance or from a scheme of collective security appears to be far too high, when it exacts the sacrifice of the right to keep out of wars that are waged between foreign states.

There are still further implications that demand consideration. If a state bent on retaining its status as a neutral is able to defend its territory from attack or to make hard the way of the transgressor that invades it, steadfastness to its purposes serves to keep its domain from becoming an area of hostility, and to that extent to diminish the possible field of military operations, and may even deter the very outbreak of a war. A neutral territorial sovereign, whether Belgian or any other, may in fact find it impossible to safeguard from seizure an area of which the control is deemed to be of utmost strategic importance to a belligerent neighbor. It is not known whether, or to what extent, the sovereign of an area that is undefended by nature, and that separates the territories of opposing belligerents, can today without foreign aid preserve such an area inviolable.[7] Nevertheless, the resolute

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France and Belgium would still be necessary, but the British Government insisted that if that should happen the guarantee must be reciprocal—that is to say, Belgium and France would have to come to the aid of Britain if she were attacked. So far the negotiations have not failed, or at least their failure has not been admitted; indeed, on September 18, Mr. Eden invited the five Locarno Powers (including Belgium) to a new conference. The proposed Belgian neutrality would not necessarily prevent a new Western Pact, for the other four Powers might agree to guarantee her neutrality without asking for reciprocal guarantees, as was the case before 1914. It would, however, prevent the suggested pact between France, Britain, and Belgium from coming into force if negotiations fail."

[7] It must, of course, be constantly borne in mind that the invasion of Belgian territory by any state is likely to be regarded as adding to the defensive requirements of some of its neighbors, and that at least one of them may be expected, in such contingency, on grounds of its own self-defense, to endeavor to repel the invader. Thus Belgium may need no alliance in order to become the beneficiary of such action. Cognizance must also be taken of another consideration. The attempt to strike a decisive blow in the shortest time against a state whose territory is contiguous to, or in the vicinity of, that of Belgium may assume the form of an aërial attack. If, in the course thereof, belligerent aircraft initiate flight over Belgian neutral territory, the offended sovereign, however incensed by such illegal action, might not

endeavor of the sovereign to do so, by utilizing all of the means at its disposal in seasons of peace as well as in those of war, may so greatly enhance the burden of a belligerent neighbor which desires to invade it, as to discourage its recourse to such action. With appreciation of the military effect of the best efforts of a neutral state, howsoever located, to deter the commission of warlike acts on its soil, and thus to decrease the very existence of localities available for hostile military operations, there is seen a salutary influence for peace that might be exerted if other states in Europe or elsewhere accepted the reasoning and followed the course proposed by the King of the Belgians. It has inspired Mr. Walter Lippmann to declare: "It may be, too, that a new system of peace is in the making, based not on collective action against an aggressor but on the defense of neutrality. If, for example, Poland followed the Belgian example and took a clear decision to join neither Germany nor Russia, the Russo-German war would be a difficult war to fight. There would be no battle-field." [8]

Nothing that has happened in Europe during the interval between the termination of the World War and the year 1937 indicates that the King of the Belgians made an incorrect diagnosis of the problem confronting his country or failed to suggest the correct solution of it. It is believed that he did even more, and that by his realistic approach to the task involved in maintaining the inviolability of Belgian soil, he necessitated a faithful reconsideration of the conclusions of thought that prevailed in 1919, and especially of those which ignored the value of neutrality either as a means of safeguarding the inviolability of territory, or as a deterrent of war between states seeking recourse to armed conflict.

CHARLES CHENEY HYDE

THE INTER-AMERICAN CONFERENCE FOR THE MAINTENANCE OF PEACE

The genesis of the idea for the special Inter-American Conference which began its meetings at Buenos Aires on December 1, 1936, has already been described in this JOURNAL.[1] It is the 108th Inter-American Conference, the first having been held one hundred and ten years ago.[2] It is the second Inter-

in fact suffer as grievous harm as would be the case were a belligerent army to occupy the land. Nevertheless, any Belgian effort to repel by force the belligerent that merely sought transit by air over Belgian soil might be expected to induce an aërial bombardment designed to overcome all resistance.

[8] "Disentanglement in Europe," New York Herald-Tribune, Oct. 17, 1936.

[1] Vol. 30 (1936), p. 270.

[2] See list in Department of State, Publication No. 499. Since 1933, the date of that publication, the following conferences have been held: Seventh International Conference of American States, Montevideo, Dec. 3–26, 1933; The Central American Conference, Guatemala City, March 14–April 13, 1934; Ninth Pan American Sanitary Conference, Buenos Aires, Nov. 12–22, 1934; Pan American Commercial Conference, Buenos Aires, May 26–June 19, 1935; Seventh American Scientific Congress, Mexico City, Sept. 8–17, 1935; Third Pan American Red Cross Conference, Rio de Janeiro, Sept. 15–25, 1935; Seventh Pan

American Conference held outside of the United States which has been signalized by the presence of the President of the United States.

This special conference had a broad agenda, but the Governing Board of the Pan American Union resolved on July 22, 1936, to recommend to the Conference that "preferential consideration be given to the questions relating to the organization of peace, and that the Conference determine which of the other topics, whether of an economic, commercial or cultural character, are sufficiently ripe to merit a sufficiently general consensus of approval to make advisable their consideration. . . ." The agenda as approved by the Governing Board at the same session included six general heads: I. Organization of Peace; II. Neutrality; III. Limitation of Armaments; IV. Juridical Problems; V. Economic Problems; VI. Intellectual Coöperation.[3] The first and second headings are unquestionably the most prominent and probably the most important at this time.[4]

There are indications that in certain quarters the convocation of this conference was regarded as an attempt to drive the League of Nations out of the Western Hemisphere. Obviously no tangible evidence is produced to support this thesis. It is a fundamentally fallacious thesis. It stems from the discussions of the relative merits of regionalism *vs.* universality in world organization. Some ardent supporters of the League of Nations profess to see in moves toward regional arrangements a desire to sabotage the League. Perhaps some such moves are so motivated. Basically, however, the opposition to regionalism is akin to the outcast notion, once prevalent in politico-economic thought, that the prosperity of one state depended upon the destruction or poverty of its rivals. With reference to international organization today, any forward step taken anywhere in the world is of direct value and assistance to any similar moves elsewhere. The improvement or perfection of the machinery for international coöperation in the Western Hemisphere is of great value to the fundamental purposes which the League of Nations was designed to serve. It is also pertinent to recall that the agenda of the Buenos Aires Conference specifically calls for consideration of "measures of coöperation with other international entities." The League has always labored under the burden of exaggerated hopes raised by the too ambitious program embodied in the Covenant. It may have to act now upon the principle of the French proverb, "*se reculer pour mieux sauter.*"

The Pan American movement, on the contrary, has grown modestly but steadily. It has not sought to vest in a central organization political powers

American Child Congress, Mexico City, Oct. 12–19, 1935; Second Assembly of the Pan American Institute of Geography and History, Washington, D. C., Oct. 14–19, 1935; Third Pan American Conference of National Directors of Health, Washington, D. C., April 4–15, 1936.

[3] Inter-American Conference for the Maintenance of Peace, Special Handbook for the Use of Delegates. Prepared by the Pan American Union (1936), pp. 3–5.

[4] *Cf.* Thompson, "Toward a New Pan-Americanism," Foreign Policy Reports, Vol. XII, No. 16, Nov. 1, 1936.

which upon occasion would necessarily be sterile if the central organization should seek to apply them against a powerful but recalcitrant state. The Pan American theme is voluntary coöperation carried to the extent which all members, at any given period of time, are willing to accept.

Relative to the first item on the agenda of the Buenos Aires Conference—"Organization of Peace"—it should be noted that many of the American Republics are already parties to five international instruments which the United States recommended should be coördinated: [5]

1. The Treaty to Avoid or Prevent Conflicts (The "Gondra Treaty"), signed at Santiago, May 3, 1923.

2. The Pact of Paris for the renunciation of war, signed at Paris, August 28, 1928.

3. The General Convention of Inter-American Conciliation, signed at Washington, January 5, 1929.

4. The General Treaty of Inter-American Arbitration, signed at Washington, January 5, 1929.

5. The Argentine (Saavedra Lamas) Anti-War Treaty, signed at Rio de Janeiro, October 10, 1933.

Some such coördination of existing instruments and, possibly, their consolidation in one instrument, is highly desirable. The Argentine Anti-War Pact had this point as one of its objectives, but it has not superseded the other agreements and the situation now is quite unnecessarily complex.

The agenda also called attention to the usual problem of securing prompt ratification of such instruments. It envisaged, rather vaguely, the "generalization of the inter-American juridical system for the maintenance of peace." Finally, it posed the problem of the creation of an Inter-American Court of Justice. In this last connection, the remarks made above regarding regional machinery for pacific settlement may need some qualification. Despite the deserved prestige of the Permanent Court of International Justice, its docket has not been crowded. International courts are expensive to maintain. It is not always easy to find a sufficient number of eminently qualified jurists who are in a position to devote their entire time to such work. The allocation of positions on the bench among the several contracting parties has been proved by history to be an extremely thorny problem. It might be wiser to have regional courts only as courts of first instance, from which appeals could be taken to the Permanent Court at The Hague. There has of course been considerable agitation in favor of such a system. There is a real need in the Americas for some permanent judicial machinery which could function in the settlement of the ordinary run of pecuniary claims. The well-known divergencies of view existing particularly between the United States and other American Republics as to some legal rules for determining the responsibility of a state for injuries to aliens, makes the establishment of such a permanent

[5] There are other treaties not included in this plan; *cf.* Hudson, "The Inter-American Treaties of Pacific Settlement," Foreign Affairs, Vol. 15 (1936), p. 165.

court difficult but not impossible. The need for it is dramatically emphasized by an examination of the awards of the many claims commissions which have adjudicated such cases. The long periods of time intervening between the dates on which claims arise and their final adjudication results all too frequently in awards which include interest charges totalling amounts often equal to or in excess of the principal sum. It may be recalled that the Pan-American Pecuniary Claims Convention of 1910 obligates the parties to arbitrate all such claims which "are of sufficient importance to warrant the expenses of arbitration." The present high cost of arbitration causes great hardship to small claimants.[6] In this connection it is also well to remark the points on the agenda of the Buenos Aires Conference which contemplate the codification of international law and the "Formulation of principles with respect to the elimination of force and of diplomatic intervention in cases of pecuniary claims and other private actions."

According to available press statements, the proposals submitted at Buenos Aires for an American international court have been referred to the Pan American Union for study and report to the Eighth Pan American Conference in 1938. It is also stated that the project for the codification of international law has been shelved.

On December 7th, Secretary of State Hull made public the text of a "Coordinating Convention."[7] This project was subsequently abandoned in favor of new drafts, but it remains important as an indication of the policies which the United States advocated. It is reported that the opposition to the original proposal was largely inspired by the fear of some Latin American members of the League of Nations that the approval of such a treaty might lead to conflict with their obligations under the Covenant.

Article I of the original Hull proposal referred to the five treaties already mentioned, roughly summarizing their provisions and renewing the pledges contained therein. Article II would have set up a new type of machinery. It proposed the creation of a Permanent Inter-American Consultative Committee. The committee was to have been composed of the Secretary of State (the Minister for Foreign Relations) of each one of the contracting parties. The committee was specifically charged with establishing "efficient methods of procedure—such as arrangements for consultation by telephone, telegraph and mail" in order that they might act with despatch in an emergency. The functions of the committee were limited to disputes arising in the Western Hemisphere and apparently to disputes arising between two or more of the signatories of the convention. The aid of the Permanent Inter-American

[6] However, a more fundamental and desirable solution would be the perfection of procedures in national courts whereby aliens could sue the state for damages in all cases from which international claims might arise; see Hyde, "A convention for the prevention of international differences arising from private claims," Report of the Twentieth Annual Lake Mohonk Conference on International Arbitration, 1914, p. 125.

[7] Text in Department of State, Press Releases, Dec. 12, 1936, p. 478.

Consultative Committee might be invoked by the disputing parties or the committee might consult on its own initiative and might act in a mediatory capacity. As in the old Bryan type of treaties, the parties would have agreed that while the committee was considering a dispute "they will not commit acts which may aggravate the controversy nor resort to hostilities nor take military action preliminary to hostilities."

After thus stating the various procedures, new and old, for the settling of disputes and for the avoidance of war, Articles VI through X dealt with the conduct of neutrals in case war did break out. Under Article VI, the Saavedra Lamas Anti-War Treaty was invoked by reference to the obligation of the parties to adopt in their character as neutrals "a common and solidary attitude." They were to act through the Permanent Inter-American Consultative Committee. The committee's first task was to decide whether a state of war actually existed, but individual states were not precluded from determining this issue for themselves with reference to the application of domestic neutrality legislation or with reference to general rules of international law on neutrality. Under Article VII, it was declared that neutrals were free to prohibit or restrict trade and commerce between themselves and belligerents and that such prohibitions or restrictions should not be considered as in contravention of treaties of commerce. This provision was obviously inserted because of the rather vigorous discussion of the subject during the debates on the legislation in the United States in the winter of 1936. This same article reflected the recent neutrality act of the United States in requiring that such prohibitions or restrictions should be applied equally to all belligerents except in situations where any of the parties were bound to take other action by other multilateral treaties or conventions to which they were parties. This was presumably a reference to obligations under the League Covenant. Articles VIII and IX were further reflections of the new United States neutrality legislation. The former article required neutrals to embargo shipments of arms, ammunition or implements of war to any of the belligerents or to neutral countries for transshipment to or for the use of belligerents. Article IX similarly provided for embargoes on loans and credits. Article X was an explicit reservation of the right of neutrals to impose other restrictions on trade and commerce with belligerents if they wished to do so.

The new drafts [8] divide the problems between a "Peace Convention" and a "Convention Coördinating Existing Treaties." The inadequacy of the latter is demonstrated by the co-existence of the former. There is, moreover, a "Non-Intervention Convention" reaffirming the principles of the Convention on Rights and Duties of States, signed at Montevideo in 1933. The aim of consolidation and unification of the inter-American treaties for the advancement of peace is apparently not being achieved.

The "Peace Convention" adapts in its preamble the language of Article 11

[8] Texts in the New York Times, Dec. 14, 1936; *cf.* Department of State, Press Releases, Dec. 19, 1936, p. 503 ff.

of the Covenant, and on this premise that war anywhere concerns all states everywhere, lays down in Article I an obligation to consult whenever "the peace of the American republics should be menaced." Article II elaborates the aims of consultation in the event of both inter-American and extra-American wars.

The Coördinating Convention, like the original Hull proposal, paraphrases the five treaties to be "coördinated." The proposal for a Permanent Inter-American Consultative Committee is dropped with nothing put in its place, although the need for consultation is repeated and it is asserted that "it is desirable to create a practical means whereby an effective and continuing opportunity for such consultation and coöperation shall be made available." Apparently (under Article II) the parties are thrown back on the several somewhat conflicting procedures of the earlier conventions. The draft as published is highly repetitious, with numerous references to the obligation to consult in case of war or threat of war. Perhaps prior procedures are strengthened by the stipulation that states in controversy—if parties to this treaty—will not resort to military action "during cognizance of the dispute by the High Contracting Parties." As for neutrality, the new plan reiterates the obligations of the Argentine Anti-War Pact for the parties to take "in their character as neutrals a common and solidary attitude," but there is no real development of that potentially important treaty. There is no obligation, as there was in the first Hull proposal, to impose any embargoes; the parties may "take into consideration" the placing of embargoes "but only through the operation of . . . domestic legislation."

There is nothing startling about any of these proposals. They will disappoint those who do not agree with Secretary of State Root's remarks to the Third Pan American Conference at Rio de Janeiro in 1906: "Not in a single conference, nor by a single effort, can very much be done. You labor more for the future than for the present; but if the right impulse be given . . . the work you do here will go on." These most recent proposals are important as further steps along the line of inter-American coöperation. From the standpoint of the United States they mark an advance toward a policy of international consultation, although confined to the inter-American realm. Perhaps the most disappointing feature is the failure to provide any thorough plan for inter-neutral coöperation.[9]

It is not possible here to do more than mention the proposed economic resolution urging equality of treatment and reduction of trade barriers, and the convention for promoting cultural relations by establishing governmental fellowships for the exchange of students and professors. These topics will warrant detailed analysis at a later time.

An outstanding aspect of the Conference has been the apparent willingness of Secretary Hull to yield gracefully to counterproposals. He seems also to

[9] Cf. Neutrality, Its History, Economics and Law, Vol. IV, Jessup, Today and Tomorrow (1936), Chap. VI.

have adopted the wise conference technique of securing agreement through informal conversations instead of precipitating debate and conflict in the formal sessions of the conference and of its committees. PHILIP C. JESSUP

THE BAN ON ALIEN MARRIAGES IN THE FOREIGN SERVICE

In an Executive Order of November 17, 1936,[1] President Roosevelt amended the instructions to diplomatic and consular officers by the addition of a regulation which is intended to prevent Foreign Service officers from marrying aliens. The order is general in its effect and applies to men and women alike. It has not, therefore, aroused any opposition from the advocates of equal treatment for men and women. In point of fact, the women in the Foreign Service who have married have found it either inconvenient or inappropriate to continue in the service and have resigned. By the terms of this new order, henceforth the Foreign Service officer who would marry an alien is required to send in a request for permission, "accompanied by the officer's resignation from the Foreign Service or for such action as may be deemed appropriate." This provision, in so far as it implies the possibility of permissive authorization, is probably intended to be only temporary in order to obviate interference with those who have already plighted their troth; and in one or two such instances, the request for permission made subsequently to the issuance of the order has been granted. But after this transition period, the Department, if it does not refuse all requests for permission, undoubtedly will be subjected to criticism on the ground of discrimination; and when a request is refused, the lady in question will naturally regard such action as a disparagement and official insult from the American Government. This transitory provision, if so it be, also serves to leave the Department an escape in the event that the regulation should prove too drastic or arouse unexpected criticism and opposition.

It must be remembered that since the passage of the Cable Act[2] an alien woman who marries an American does not thereby acquire his nationality, with the consequence that the alien wife of a Foreign Service officer would require a separate passport from another government, and the circumstances of her different nationality would necessarily entail certain inconveniences in case of travel or transfer of post; it would, in some instances, be the cause of another serious handicap to the efficiency of an officer married to an alien in that it might render inexpedient or even impossible to detail him to a post where he might, because of his particular qualifications, be especially useful. In the present state of tension in Europe, a Foreign Service officer with a French or Russian wife might not, for example, be available for service in Germany.

Other inconveniences and difficulties arise from the necessarily representa-

[1] Executive Order No. 7497. Printed also in The Department of State, Press Releases, Dec. 5, 1936, pp. 456–457; and in Supplement to this JOURNAL, p. 51.

[2] Act of Sept. 22, 1922, 42 Stat. 1022; Supplement to this JOURNAL, Vol. 17 (1923), p. 52.

tive character of the wife of a Foreign Service officer. If she be the ranking lady of the mission, she will be called upon to play an important rôle as the leader of the American women in the capital, and she will be expected to preside at patriotic and social gatherings. If she is an alien, this is not likely to please the American colony and American travellers.[3] The situation becomes especially trying when, as has happened in one or two instances, the wife of the Foreign Service officer appears to take little interest in her husband's country, and does not even trouble to learn to speak English.

While the effect of the Executive Order may sometimes be to thwart the course of true love, a way out can be found if the prospective alien bride will follow the course necessary to secure naturalization as an American citizen. But whereas one married to an American citizen may become naturalized in three years,[4] a prospective bride would have to wait the usual five-year period.

In the departmental order which brings the regulation to the attention of American diplomatic and consular officers, it was stated that the Department fully appreciated "the fact that in the past certain men, themselves of unquestioned ability, have reached high position in the Service and have been aided by the valiant, loyal women of foreign birth to whom they were married. In the present condition of world affairs, however," the Department considered that "any tendency further to increase the number of marriages of this character must be regarded with concern."[5] Upon examination, the communication stated, it was found that eighteen per cent. of the Foreign Service officers of career were married to women not of American birth, while twenty-seven per cent. of the clerks had taken this same step.[6] The Department considered that all members of the Foreign Service must realize that the Foreign Service offers advantages sufficient, certainly, to expect of them sacrifices for the good of that Service. Attention also was drawn to the fact that other nations had had to consider the problem of alien marriages and to issue instructions of their own.[7] Consistently with the application of the alien mar-

[3] As reported in the press (New York Herald-Tribune, Dec. 2, 1936), Ambassador Bullitt, upon his arrival in Moscow, was placed in this embarrassing situation. The Ambassador, who is a single man, found no American wife among the members of his staff.

[4] Act of May 24, 1934, 48 Stat. 798; Supplement to this JOURNAL, Vol. 28 (1934), p. 130.

[5] Diplomatic Serial No. 2727, Nov. 28, 1936, "Marriage of Foreign Service Officers with Aliens," printed in Department of State Press Releases, Dec. 5, p. 456; also Supplement to this JOURNAL, p. 50.

[6] Of 684 Foreign Service officers, 127 have married aliens; 45 of British nationality, 22 French, 11 German, 10 Russian, and 39 distributed among 19 other countries. Fifty-one of these marriages occurred before the Cable Act became effective, so that these alien wives as a consequence of their marriage acquired the American nationality of their husbands. Twelve others have been nationalized since their marriage, and one before. The other 63 have remained aliens. Of the 724 American clerks in the Service at the date of June 30, 1936, 202 had married aliens, of whom 146 still retain that status.

[7] Brazil and Japan, for instance, prohibit marriage with aliens; Mexico gives preference to Foreign Service officers married to Mexicans; and several other countries, including Belgium, Chile, Ecuador, France, Italy, Peru, and Turkey require their Foreign Service officers either to notify their government in advance or to ask for its permission.

riage ban to officers of the Foreign Service, the Executive Order also provides: "No person married to an alien shall be designated to take the entrance examinations for the Foreign Service."

The first reaction of the general public to this regulation may well be that it is a regrettable step in the direction of that extreme nationalism which it has been the policy of the Administration to combat. It is, furthermore, a serious restriction of the freedom of the individual. We like to think that the right type of American would not let any consideration stand in the way of marrying the woman of his choice. The consequence of the regulation might then be to eliminate from the Foreign Service the very officers who were most typical of that fine, idealistic, independent American spirit which our representatives should possess. But, as has been indicated, naturalization will make it possible to enter into such a marriage without the separation of the Foreign Service officer from his professional career. In some instances in the past, it cannot be denied that alien women have been influenced to marry Foreign Service officers because of their desire to acquire their official position, and the results of such unions have not always been happy. The present regulation will remove that incentive; and it will have another advantage in that it will impose a certain delay in the case of the younger members of the Service who might, in the first period of their foreign sojourn with its consequent strangeness and resulting loneliness, be tempted to contract a marriage which, had they waited a few years, might not have seemed really desirable.

After all, it is only the officers of the Department of State and those whose official duty it is to watch over the efficiency of our Service who are actually familiar with all the inconveniences or even dangers consequent upon the condition which confronts them as a result of alien marriages by Foreign Service officers. We as outsiders without access to the confidential Service records are hardly competent to criticize the order, and must necessarily acquiesce in the statement contained in its concluding paragraph:

> This regulation is based upon the principle that officers of the Foreign Service are expected to be available in the discretion of the President for duty in any country or in any part of the world, and that anything which detracts from the availability of individual officers has an adverse effect upon their usefulness and upon the efficiency of the Service.

In this connection, the Department is to be congratulated on a statement which it recently issued to the effect that, in as far as possible, it will hold examinations for the Foreign Service annually in September. Heretofore, it has been discouraging to the institutions interested in giving applicants for the Foreign Service courses of training considered to be of permanent value, to find their studies interrupted by a call to take the Foreign Service entrance examinations in the middle of the academic year.

There is still another improvement much needed in the Foreign Service, which is to secure the adoption of legislation whereby Ministers will ordinarily

be appointed to that grade and not appointed to a specific post. If the rank of Minister were added to and made the superior grade of those now established in the Foreign Service, the Foreign Service officers who had reached what is at present the highest class would, in cases of exceptional merit, be promoted to this superior grade of Minister. They would not, as is now the case when appointed as Minister, hold that rank only while detailed to a specific post upon appointment by the President with the consent of the Senate. This provision would not in any way prevent the President from submitting the name of an appropriate individual to the Senate for appointment to a particular post. If it should happen in consequence of such appointments that there were not enough posts available for Foreign Service officers who had reached the rank of Minister, they could still be held available, as is now the case in many other services, to lend their assistance in an embassy or in one of the important divisions of the Department of State. They might also be detailed to serve as Consuls General in certain important posts. It would not be disadvantageous to have one or two members of the Foreign Service of ministerial rank available for whatever emergency might arise in the Foreign Service. The adoption of this provision above all would have the effect of reducing the spoils in the Foreign Service to a minimum.

ELLERY C. STOWELL

PROTECTION OF NATIONALS CHARGED WITH CRIME ABROAD—CASE OF LAWRENCE SIMPSON

The case of Lawrence Simpson, an American seaman, charged with high crimes in Germany, aroused wide public interest in the United States because of the profound changes introduced in the administration of criminal justice in totalitarian states. Telegrams received from the International Labor Defense and the American Civil Liberties Union in July, 1935, induced the State Department to telegraph to the American Consul General in Hamburg requesting him to ascertain the facts regarding Simpson's arrest on board the United States Line steamship *Manhattan* upon its arrival at Hamburg on June 28, 1935. The Consul General replied that Simpson had been apprehended because of possession of communistic propaganda-material; that the police authorities asserted that he was involved with seventy other persons in communistic work and that he was detained pending trial. Further investigation on the part of the American Consul at Hamburg disclosed that Simpson had been placed in a concentration camp; that the consul had visited him at the camp and had inquired into the treatment accorded to the prisoner. It seems that he had first been placed in solitary confinement; with the exception of this circumstance, he made no complaint and it was understood that Simpson could communicate in writing with the Consul General and might be visited by representatives of the Consulate if necessary.[1]

[1] The facts of the case are taken from a brief of files in the Department of State dated Sept. 22, 1936.

The prompt interest exhibited in the case by the State Department may have been the means of obtaining for Simpson fair treatment while undergoing detention. On the other hand, notwithstanding the fact that the hope had been repeatedly expressed to the German authorities that Simpson might be given an early trial, he was held in prison without bail pending his trial for fifteen months under the assertion that he was being held in connection with proceedings against other persons charged with high treason. The trial was taken out of the hands of the ordinary courts and transferred to the *Volksgericht,* or People's Court, at Berlin, before which only especially approved attorneys are allowed to practice. The trial took place September 28, 1936, the court having been constituted by the presence of a presiding judge, an assessor, a police officer and several lay members of the National Socialist Party. Simpson was found guilty of disseminating propaganda-material, but not of conspiracy or treason against the state, and was sentenced to three years' imprisonment, with commutation for part of the time served awaiting trial.[2]

In commenting upon the change in German judicial procedure under the Third Reich, Prince Hubertus Lowenstein, of the former Catholic Center Party, points out: "The National Socialist Party has changed the entire construction of German law and legislation. It was not enough to make the judges trustees not of the law but of the National Socialist Party, but now special courts have been established which have to try their cases without any legal consideration, considering only the daily changing interests of the National Socialist Party." [3] In reality, even though ancient nomenclature be retained, such bodies are not judicial courts but arms of the political administration.

Under established practice of the State Department it may demand the assurance that an American citizen may have adequate protection at trial "if the Department of State believes that from the nature of the offense charged or from the proceedings already instituted, the prisoner is exposed to improper treatment." [4] During the past half century or more, the Department has had occasion to make diplomatic representations in order that these rights may be protected, chiefly to some of the newer and more unsettled countries of the Americas, less frequently to European countries. Thus, in the case of Gaskill and Ward, two American citizens imprisoned in Mexico for eleven months awaiting trial, Secretary Bayard instructed the American Minister to direct that the prosecution "be brought at once to trial and that the proceeding should be conducted in such a way as to give the accused in advance a state-

[2] New York Times, Sept. 29, 1936. A further commutation has since been granted and Simpson has been released and returned to the United States.

[3] Address before the American Academy of Political and Social Science, April, 1935, The Annals, Vol. 180, p. 30.

[4] C. C. Hyde, International Law Chiefly as Interpreted and Applied by the United States, Vol. 1, pp. 504–505.

ment of the witnesses to be produced against them and the opportunity of cross-examining these witnesses face to face on trial, and of producing witnesses on their behalf in defense." [5] In the same year similar representations were made in the well-known Cutting case. Although best known for the question raised as to the jurisdiction of a state to punish for crime committed outside its territory, the representations made at the time related also to the treatment accorded to the prisoner and the delay in bringing him to trial. Secretary Bayard requested the American Minister to draw to the attention of the Mexican Government "that by the law of nations, no punishment can be inflicted by a sovereign on citizens of other countries unless in conformity with those sanctions of justice which all civilized nations hold in common." [6] Among these rights must be included the opportunity for a speedy trial.[7]

Señor Guerrero, in his report on the Responsibility of States made to the Preparatory Committee of the League of Nations, failed to recognize that there is a minimum international standard accepted by civilized states in the exercise of police power and the administration of justice where aliens are concerned. Following the well-known doctrines of Calvo, he maintained that a state owes nothing more than treatment similar to that accorded to its own nationals.[8] The United States Government, in its letter of May 22, 1929, to the Preparatory Committee cited a large number of authorities against this view, among others that of Secretary Bayard in his representations to Mexico in the Cutting case. "If a government could set up its own municipal laws as the final test of its international rights and obligations, then the rules of international law would be but a shadow of a name and would afford no protection either to States or to individuals." [9]

The principle of a minimum international standard has been recognized by recent German writers dealing with the subject. Professor Erich Kaufmann of Berlin points out that the defense offered by governmental or administrative agents or by courts that their action is in conformity with national law and that there has been no discriminatory treatment of aliens is not an acceptable excuse. He supports his statement by reference to Judgment No. 17 of the Permanent Court of International Justice in the matter of certain German interests in Upper Silesia. Indeed the German Government seems to have taken a similar stand in its representations to the Soviet Government upon the arrest and detention of a number of German nationals in November, 1936, where indefinite charges of espionage and treason were asserted.[10]

[5] Moore, Digest of International Law, Vol. 6, p. 281. [6] *Ibid.*, Vol. 2, pp. 229–230.

[7] Secretary Blaine to Mr. Lowell, June 2, 1881; 2 Wharton's Digest of the International Law of The United States, 627.

[8] Special Supplement to this JOURNAL, Vol. 20 (1926), p. 182.

[9] Secretary Bayard to Mr. Connery, Chargé to Mexico, Nov. 1, 1887. Moore, Digest of International Law, Vol. 2, p. 235. See also comment to Art. 5 of the Draft Convention upon the Responsibility of States, Harvard Research in International Law, Drafts of Conventions, 1929, p. 148; F. S. Dunn, Protection of Nationals (1932), p. 56.

[10] See New York Herald Tribune, Nov. 17, 1936, p. 17. *Cf.* E. Kaufmann, *Règles Générales du Droit de la Paix*, 1936, p. 120, published in *Recueil de l'Académie*, Vol. 54, p. 428.

Violations of this kind may be considered a denial of justice within the larger definition of the term. Vattel refers to the ways in which justice is denied . . . "(2) by pretended delays, for which no good reason can be given, delays equivalent to a refusal or even more ruinous than one." [11]

Unwarranted delays in the administration of justice are frequently a concomitant of the lack of an independent judiciary, the method and tempo of procedure being under the control of political officers. The importance of the Simpson case lies in its having pointed out the greater peril to the rights of aliens where the ordinary safeguards are lacking against arbitrary trial and punishment. The dangers are magnified by the fact that it is precisely in such countries that crimes such as the dissemination of propaganda material, sabotage, violation of monetary restrictions, are subject to extreme penalties. The protection of nationals if limited in such cases to the presentation of a claim becomes wholly inadequate. Westlake pointed out that where there was flagrant injustice in the methods either of the judicial or of the administrative departments, or in the law applied, the state to which a foreigner belongs has a claim to step in for his protection, which often has this in common with political claims, that the justice which the foreign Power demands for its subjects is not measurable by definite rules.[12]

Where summary methods of criminal procedure are provided for, diplomatic interposition in behalf of the nationals of foreign states must be prompt and energetic in order to be effective. A probable development will be the organization of groups of citizens in democratic states to bring the weight and influence of numbers to bear upon Foreign Offices in order that the vital interests of nationals may not be sacrificed because of the disappearance of individual rights under local law in the particular state.

ARTHUR K. KUHN

THE ECUADOR-PERU BOUNDARY CONTROVERSY

The official delegations of Ecuador and Peru are now negotiating in Washington under the friendly auspices of the President, a settlement of their century-old boundary dispute. By this convincing example their governments are showing loyal adherence to the enlightened practice of maintaining international peace. The high purpose of the delegations is to carry out the Quito Protocol of June 21, 1924, outlining a method of settling the boundary controversy between the two countries. Pursuant to that protocol, the two parties in February, 1934, requested the United States Government to give its consent to the sending of delegations to Washington to discuss the adjustment of their common frontier, and the President promptly gave his cordial approval of the suggestion and consented to serve as arbitrator. On July 6, 1936, the two countries signed a further protocol provid-

[11] The Law of Nations, Book II, § 350 (Classics of International Law, Fenwick's translation).

[12] Westlake, International Law, Part I: Peace (1910), p. 327.

ing that the delegations of the respective countries commence their final negotiations in Washington on September 30, 1936, and that meanwhile they undertake to maintain the existing territorial *status quo* until an arbitral award be rendered. At the opening session on September 30, 1936, the plan was stated in the address of the Chairman of the Ecuadorean Delegation, as follows:

> The Protocol of 1924 which we are going to carry out and execute establishes the procedure to be followed in the negotiation.
>
> In the first place, we must strive for a direct total settlement, in which the high contracting parties, by deciding between themselves the entire and definitive boundary line, will end the age-old dispute.
>
> If this should not be accomplished, we shall next try partial direct settlement and a corresponding partial arbitration.
>
> For that we must try to determine, by common accord, the zones which are reciprocally recognized by each one of the parties and the zone which will be submitted to the arbitral decision of His Excellency the President of the United States of America.

The President replied stating the further steps preliminary to arbitration by himself:

> The Protocol of June 21, 1924, provides for a further protocol to embody the terms of the common agreement reached through these discussions. After the ratification of this agreement by the Congresses of your two countries, if there is a territorial zone upon which agreement has not been possible, that zone is to be submitted to the arbitral determination of the President of the United States. If that duty falls to me, I pledge to you my best endeavors to conclude successfully the work of peace which you are about to begin.

The nature of this controversy has been outlined in earlier pages of this JOURNAL,[1] and it is only necessary to say that the main region involved, known as the "Oriente" territory (part of Mainas province), comprises over 40,000 square miles and lies east of the Andes on the headwaters of the Amazon. There are two other small districts in dispute, namely, Túmbez on the coast, and Jaén, inland on the Rio Chinchipe.

Ecuador rests its claim on the basis of exploration of the area in colonial days, the peace treaty of 1829 between New Granada (of which Ecuador was then a part) and Peru which defined the boundary and a method of demarcation, and the protocol between the same countries of August 11, 1830. Peru, on the other hand, rests its claim on the boundaries of colonial administration of these areas as shown by the Royal Decree of July 15, 1802, and subsequent decrees and effective colonization and occupation (acts of jurisdiction and possession) since that time.

The treaty of 1829 was the result of the victory of Colombia over Peru at Tarqui, and provided in Article 5 that "both parties acknowledge as the limits of their respective territories, those belonging to the ancient vice-

[1] See editorial comment in Vol. 25 (1931), pp. 330–331.

royalties of New Granada and Peru prior to their independence with such variations as they deem it convenient to agree upon . . . ," and in Article 6 that a boundary commission shall fix said limits.

Ecuador contended that when New Granada separated into Ecuador, Colombia and Venezuela, and Ecuador became independent in 1830, she succeeded to the advantages of this treaty fixing her southern boundary. Peru, on the contrary, contended that the treaty fell by that separation, for the other party, New Granada, ceased to exist and could not carry out the formation of the demarcation commission. At any rate, she insisted, the later treaty of 1832 between herself and Ecuador, which provided that the then existing line should be recognized pending negotiations of a boundary treaty, superseded the 1829 treaty if it ever subsisted. Moreover, Peru argued that in the negotiations leading up to this treaty Ecuador in effect gave support to this view.

The same arguments apply to the Protocol of August 11, 1830, which Ecuador claims put the treaty of 1829 in execution and left only a small part of the boundary in doubt. This protocol was first disclosed by Colombia in 1892 when she remarked that it did not appear in the collection of treaties published by Peru. Peru denied at length the existence of the protocol or the authenticity of the copy then brought to light.

The boundary being unsettled by any treaty in force in Peru's view, she maintained the principle of *uti possidetis*, including the decree of 1802 and later decrees. The 1802 decree separated the provinces of Mainas and Quijos (except Papallacta) from the vice-royalty of New Granada and attached them to the vice-royalty of Peru, because of better facilities of communication with Lima than distant Bogotá (Santa Fé). Ecuador asserted that this decree was purely of ecclesiastical nature and did not transfer or change the political status or administration of these provinces, *i.e.*, she stood for the principle of *uti possidetis* under her interpretation of this decree. At any rate, this and other decrees, she said, had been set aside by the 1829 treaty and 1830 protocol. Peru countered by claiming that the provinces in question have always been a part of her territory since independence when they cleaved to her, and have been represented in her Parliament ever since. In fact, she insisted, they were so represented in the Parliament which recognized Ecuador at the birth of her independence.

Several questions of international law and practice are involved in this controversy. The principle of *uti possidetis* already mentioned, which has been frequently invoked in Latin American boundary controversies, depends upon the date to which possession is referred. In this case does it refer to the date of 1810 as generally adopted in South America, or to the date of proclamation of independence, or to the date of the achievement of independence, and do these dates apply to separate colonial provinces or to the group that became an independent state?

War broke out between Ecuador and Peru in 1858, and Peru for a time

occupied the port of Guayaquil. The war terminated and peaceful relations were resumed without a peace treaty. What effect did this war have upon the treaties of 1829 and 1832, and have they since been reaffirmed by act or deed?

While the so-called "right of self-determination" probably may not be called a principle of international law, yet it may have a bearing on this controversy. When the districts of Mainas, Túmbez and Jaén were emancipated from Spain, were they free to adhere to any group they chose with a view to forming an independent state regardless of their prior political connections in colonial times?

Finally, is the principle of prescription applicable to this case? Authorities say that even illegal or violent possession if maintained long enough will be transformed into a legal and honorable title. Is a century of possession sufficient, and must possession be actual or constructive? Must possession be in opposition to an adverse claim of right, and how may that claim be maintained between nations short of going to war?

It would seem that the solution in the pending negotiations of these various questions of difference and of principle will require the patience of understanding and liberality of wisdom worthy of the statesmanship of peace.

L. H. WOOLSEY

PERIODIC CONSULTATIVE TREATY RECONSIDERATION

Some recent treaties have made provision for periodic reconsideration with a view to revision if deemed desirable. Such treaties may be easily adapted to changing conditions, and in international relations changes are inevitable. The larger the number of states parties to a treaty, the greater the probability of the need of revision. This is illustrated by recent action relating to the Covenant of the League of Nations.

The Assembly of the League of Nations on July 4, 1936, expressed the conviction "that it is necessary to strengthen the real effectiveness of the guarantees of security which the League affords its members." A prime objective of the League had been "to promote international coöperation and to achieve international peace and security." A review of events since the coming into force of the Treaty of Versailles, January 10, 1920, justifies the Assembly in the opinion that the hopes of 1919 have not been fully realized. The forecasts for the future of the Allied and Associated Powers under the treaty were generally too optimistic.

The Assembly accordingly recommended on July 4, 1936, that the Council canvass the members of the League as far as possible before September 1, 1936, for proposals with a view to improving the application of the principles of the Covenant. Many members of the League in their replies suggested that provisions for collective security should be emphasized. Some suggested that these provisions be operative regionally, while others, recognizing that inter-

national law was a universal system, argued for a single standard and for its support. The Soviet Government saw greater effectiveness in operation of the Covenant if decisions under Article 16 should be made on a three-quarters vote, not including the two parties involved in the controversy. The government of neighboring Latvia saw grave difficulties in establishing collective security while many important states were not bound to coöperate in the measures prescribed. Norway pointed out that the growth of national armaments made the problem of enforcing the Covenant more difficult and that regional pacts for mutual assistance might easily become new alliances. Peru refers to the distinction between the intention to act upon the maxim *pacta sunt servanda* and the capacity to keep international engagements.

A large number of the members of the League hope for some universalizing of the League or for a coöperative scheme with non-member states. Democratization of the Council is often demanded. The separation of the Covenant from the other parts of the Treaty of Versailles is also mentioned, though it is admitted that to a considerable extent this has already occurred.

That such a pact as the Covenant of the League of Nations, revolutionary in many of its provisions, should, after a period of years, need reconsideration would seem inevitable, and China refers to the action of the Assembly as "opportune and of great significance."

Doubtless it would have been advantageous if the Covenant of the League of Nations had made some provision for periodic reconsideration of its articles. Weaknesses in the Covenant could to a degree have been discovered and remedied in advance and misleading confidence in the operation of the League machinery could have been avoided. A periodic consideration with view to adaptation of the Covenant to changing conditions might have resulted in strengthening international organization and order, while delayed regard for changing conditions has resulted in the weakening of an organization upon which the world had placed so much hope. GEORGE GRAFTON WILSON

THE ANTI-SMUGGLING ACT OF 1935

The "Anti-Smuggling Act" was passed on August 5, 1935.[1] Its principal purpose was to facilitate the more adequate enforcement of the revenue laws of the United States, particularly against vessels smuggling liquor from the sea into the United States. Extensive hearings were held on the bill before the Committee on Ways and Means of the House.[2] The bill was sponsored by the Treasury Department, and despite repeated efforts on the part of the House Committee to obtain a statement of the views of the Department of State, no statement was made on behalf of that Department. A letter to the Chairman of the Committee from Secretary of State Hull was read into the record. This letter declared that "Such communications as this Department

[1] Public No. 238, 74th Congress.

[2] 74th Congress, First Session, Hearings on H. R. 5496, March 8–13 and May 1–2, 1935.

has seen fit to make regarding the bill have been brought to the attention of the Secretary of the Treasury, who is charged with the duty of enforcing anti-smuggling legislation, and I assume that such of those comments as may be deemed pertinent to you here will be brought to the attention of the Committee by officials of the Treasury Department." Although the representative of the Treasury who appeared in defense of the bill before the Committee was asked to obtain from the Secretary of the Treasury authorization to communicate to the Committee the comments which had been made by the State Department, the Treasury representative reported that he was authorized to state only "that the State Department has advised the Treasury Department that it will not oppose the enactment of this bill." There seems to be considerable justification for the view of several members of the Committee who read between the lines of Secretary Hull's letter a desire to avoid becoming involved in the matter in any way. There is an inescapable implication that the State Department had some reservations regarding the legislation.

Whether or not the Anti-Smuggling Act will result in diplomatic controversies will probably depend upon the way in which it is enforced. There are provisions in the Act which are open to grave question and which may cause serious international complications, but, as the Government of the United States learned in the course of a long series of negotiations with the Mexican Government, it is usually futile to enter into a controversy with a foreign government regarding the terms of legislation before the legislation is applied in any particular case. It is understood that one foreign government, however, has indicated that it questions whether this legislation is in accord with recognized principles of international law.

Only certain provisions of the Act can be treated within the scope of this comment; attention will be called to aspects which are of particular interest from the international standpoint.

The Act contemplates the existence of four different zones in the waters adjacent to the coasts of the United States. First, there is the zone of territorial waters extending three miles from the shore. Second, there is the old customs administration zone which extends twelve miles from the coast and which has been a familiar feature of American legislation since 1790. Third, there is the treaty zone extending one hour's sailing distance from the coast; this is the zone established by the liquor treaties which have been concluded with sixteen foreign nations.[3] It will be recalled that the hour's sailing distance may be measured either by the speed of the principal smuggling vessel or by the speed of contact boats. "Customs waters" are defined by Sec. 201 and Sec. 401 of the Act to include waters within the distance specified by a treaty, and in case of vessels of non-treaty Powers, the waters within four leagues of the coast. The fourth zone is entirely new. It is called a "customs-enforcement area." The extent of this zone varies from time to

[3] Great Britain, France, Germany, Spain, Norway, Denmark, Sweden, Panama, The Netherlands, Cuba, Belgium, Greece, Japan, Poland, Italy and Chile.

time and from place to place. Customs-enforcement areas are fixed by the President upon the basis of information supplied to him by the Coast Guard to the effect that a smuggling vessel or vessels are hovering or are being kept near the coasts of the United States for the purpose of unlawfully introducing merchandise into the United States.[4] The possible spatial extent of such customs-enforcement areas is thus described in Section 1 (a) of the Act:

> No customs-enforcement area shall include any waters more than one hundred nautical miles from the place or immediate area where the President declares such vessel or vessels are hovering or are being kept and, notwithstanding the foregoing provision, shall not include any waters more than fifty nautical miles outwards from the outer limit of customs waters.

To illustrate: if the Coast Guard informs the President that a foreign vessel suspected of intending to smuggle goods into the United States is hovering forty-five miles off the northerly tip of Long Island, the President may proclaim a customs-enforcement area extending one hundred nautical miles north and south from that point and including all of the waters sixty-two miles from the coast within that stretch of two hundred miles. If the vessel belongs to a treaty-state, the zone may extend fifty miles plus the hour's sailing distance, say eighty or ninety miles in all. When the President finds that the circumstances which gave rise to the declaration of such an area have ceased to exist, "he shall so declare" and that particular customs-enforcement area thereupon ceases to exist. The presence of a particular suspected vessel is necessary in order to have an area declared, but once it is declared, *any vessel* may be boarded in that area. It should be made clear, however, that the Act is scrupulously careful to respect the treaty obligations of the United States, and in no case may a vessel be boarded or seized in contravention of a treaty, notwithstanding any proclamation of a customs-enforcement area. Many sections of the Act are merely designed to make the powers of the customs officers and provisions of penal statutes coextensive with the limits within which the treaty assures the acquiescence of the foreign government whose flag a boarded vessel flies; the liquor treaties were not self-executing in these respects.[5] There is a hopeful proviso that even treaty vessels may be boarded beyond the hour's sailing distance if that is permitted "under special arrangement with such foreign government." Special executive agreements with respect to individual vessels which are notorious smugglers are contemplated.

The Act contains detailed provisions describing the circumstances under which vessels may be boarded and seized. Briefly, it may be said that these provisions are far reaching, apparently allowing the customs officers to act upon the basis of any suspicion as to the character and intentions of the vessel. Under the broad terms of Sec. 3 (a), for example, a foreign vessel which had

[4] It is understood that several such presidential proclamations have been issued since the Act was passed.

[5] See Jessup, The Law of Territorial Waters and Maritime Jurisdiction (1927), p. 301 ff.

been fitted out or "held" for the purpose of being employed to smuggle goods into the United States, may be seized and forfeited with its cargo if found later in a customs-enforcement area. Under Sec. 203 (a) of the Act (amending Sec. 581 of the Tariff Act of 1930) boarding officers may use "all necessary force to compel compliance." One may also note in the same section this further provision suggesting a broadened base for the right of hot pursuit: [6]

> Any vessel or vehicle which, at any authorized place, is required to come to a stop by any officer of the customs, or is required to come to a stop by signal made by any vessel employed in the service of the customs displaying the ensign and pennant prescribed for such vessel by the President, shall come to a stop, and upon failure to comply, a vessel so required to come to a stop shall become subject to pursuit and the master thereof shall be liable to a fine of not more than $5,000 nor less than $1,000. It shall be the duty of the several officers of the customs to pursue any vessel which may become subject to pursuit, and to board and examine the same, and to examine any person or merchandise on board, without as well as within their respective districts and at any place upon the high seas or, if permitted by the appropriate foreign authority, elsewhere where the vessel may be pursued as well as at any other authorized place.

But this provision is also specifically made subject to compliance with the liquor treaties except as foreign governments agree to special rules. Note also that under Sec. 207, the testimony of a boarding customs officer is made "prima facie evidence of the place where the act in question occurred."

In the hearings before the House Committee a great deal of time was devoted to examining the question whether, under international law, the United States had a right to assert such jurisdiction at such distances from the coast. It was on this point particularly that the Committee desired but failed to secure the views of the Department of State. The case of the Treasury Department was ably supported before the Committee by Professor H. E. Yntema, of the University of Michigan Law School. Professor Yntema's argument, which was presented orally and in a written memorandum, rested principally upon the theory evidenced by Chief Justice Marshall's well-known dictum in the case of Church *v.* Hubbart. It will be recalled that in that case Marshall declared that the right of a nation to protect itself and its revenues from injury was not limited to its own territory, but that the nation had a right to protect itself upon the high seas. The means which could be employed for that purpose, he said "do not appear to be limited within any certain marked boundaries, which remain the same at all times and in all situations. If they are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to." Professor Yntema supported this opinion by an imposing array of authorities, among which, naturally, special importance was attached

[6] The "hot pursuit" question involved in the *I'm Alone* case was not decided by the tribunal; see this JOURNAL, Vol. 29 (1935), p. 298.

to the British Hovering Acts. Considerable stress was also laid upon the fact that in recent times there is evidence that many nations agree upon the reasonableness of the exercise of jurisdiction upon the high seas to curb smuggling, as is shown not only by the liquor treaties of the United States but by the similar group of treaties concluded by the Baltic States. In short, Professor Yntema and the Treasury Department argued that the only test of the extent to which a nation may extend its jurisdiction in proximate areas of the high seas is the test of reasonableness. It is believed that this is a sound position under international law. We then have a mixed question of fact and law as to whether enforcement of this Act will meet the test of reasonableness.

In view of the evidence submitted by the Treasury Department to the House Committee, it can not be doubted that existing legislation and the provisions of the liquor treaties are inadequate successfully to combat the liquor smugglers. There is strength in the argument that the larger vessels engaged in legitimate commerce are in general not those participating in smuggling activities and that the enforcement of the Act against vessels of small tonnage will not interfere with legitimate commerce.[7]

Some question might be raised about the reasonableness of the provisions in Section 7 of the Act. Under that section, every vessel not exceeding five hundred net tons, which comes from a foreign port or place "or which has visited a hovering vessel, shall carry a certificate for importation into the United States of any spirits, wines, or alcoholic liquors on board thereof (sea stores excepted), destined to the United States, said certificate to be issued by a consular officer of the United States or other authorized person pursuant to such regulations as the Secretary of State and the Secretary of the Treasury may jointly prescribe."[8] If any such goods are found or are "discovered to have been" on any such vessel at any place in the United States "or within the customs waters," that is, within the twelve-mile limit or the treaty limit, without such a certificate, they shall be seized and forfeited unless they are shown to have a *bona fide* destination outside the United States, and in the latter case a bond shall be required conditioned upon the delivery of the merchandise at the foreign destination, such delivery to be certified by a consular officer. It would appear that under this section a vessel under five hundred tons, if found within the twelve-mile zone anywhere along the coast of the United States, could be compelled to give bond even though the voyage were between two foreign ports. The argument in support of this section would be that vessels of this size found in such areas are usually smugglers and it is reasonable to stop and search them.

One might also anticipate the possibility of international complications arising from the enforcement of the following provision of Sec. 205 (amending Sec. 586 of the Tariff Act of 1930):

[7] See Hearings, *op. cit.*, p. 38.

[8] These joint regulations have been issued.

> (b) The master of any vessel from a foreign port or place who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel *at any place upon the high seas adjacent to the customs waters of the United States* to be transshipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise but not less than $1,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited. [*Italics inserted.*]

Section 2 (a) of the Act contains an interesting provision looking toward reciprocity in the enforcement of anti-smuggling laws. It was argued on behalf of the Treasury Department that these and other provisions were offered as an inducement to foreign governments to enact reciprocal legislation, and it was pointed out that such reciprocal legislation already existed in the Norwegian law of June 25, 1926, upon which this section is based.[9] In brief summary, Section 2 (a) provides for the punishment of persons engaged in smuggling goods into the territory of any foreign government in violation of the laws of that government "if under the law of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting customs revenue . . ." Sections 3 and 4 contain further provisions of this character. According to the Report of the Senate Committee on Finance: "Reciprocal legislation of this character is analogous to that enacted under certain international conventions, notably the International Opium Convention of 1912, whereby each signatory power bound itself to enact legislation which would be reciprocally coöperative in the suppression of the illicit drug traffic in the other countries which were parties to that convention." [10]

If the courts have occasion to interpret this Act, they will undoubtedly take cognizance of the fact that both the Hearings and the Committee Report lay great stress upon the intent that no jurisdiction should be asserted outside the limits authorized by international law.

PHILIP C. JESSUP

[9] The Norwegian law, in providing for the punishment of persons smuggling goods into foreign countries declares, in Section 2: "Smuggling trade under this Law shall be deemed to include also the case of any ship whose cargo is unloaded beyond the customs boundary of another country under conditions which make it overwhelmingly probable that the intention is to smuggle such cargo."

[10] 74th Cong. 1st Sess. Senate Report No. 1036, Calendar No. 1083.

CURRENT NOTES

WALTHER SCHÜCKING

January 6, 1875—August 25, 1935

Walther Schücking's career is a reassurance in our day that right in the long run—in his case in his lifetime—makes right, and that a martyr in his native country is a model to the outside world,—and in his case in his own country as well.

No career could have been stranger, and yet it was natural in its every respect. If often happens, indeed it may be said to be the custom, that a German student following an academic career takes an interest in political affairs as well. But instances are rare indeed of a professor who, having opposed the foreign as well as the internal policy of his country, should become in the course of time a leading figure within his country and a model to the outside world. The truth of the matter is that great as Germany was, Walther Schücking became too great for his country. The world became his home and today he no longer belongs to his country alone but to the world.

The years of his life were sixty. Born on January 6, 1875, of an old Westphalian family, he died in The Hague, the seat of the Permanent Court of International Justice (which he honored by his membership), on August 25, 1935.

Those who wish the details of Walther Schücking's academic life and of his scholarly but yet readable publications will find those details, preceded by extracts showing his gift of style, in the Bibliography of his Writings in the special memorial number of *Die Friedenswarte* of the year 1935.

But great as he was as schoolman, great and outstanding as were his contributions to the new conceptions of the nature of law and its application not merely to the people of his country but to foreign countries as a bond of union—whether through The Hague Conferences, the League of Nations or the Permanent Court of International Justice—we prefer Schücking the man.

His career might be called accidental, but it made his life what it was. It was a happy accident that in his student days he came in contact with the great von Bar, master alike of public and private international law, at whose feet he sat and from whom he derived an abiding inspiration.

Schücking's career as an internationalist grew out of the winning of a prize offered at Göttingen, on von Bar's proposal, "for the best essay 'On Territorial Waters in International Law' (in the law of nations as well as in International Private and Penal Law)," as stated by Hans Wehberg in his admirable tribute "In Memory of Walther Schücking," appearing in the *Inter-Parliamentary Bulletin* for September, 1935. And we accept Dr.

Wehberg's statement, incredible as it seems to be, that Schücking "had never had a text book of international law in his hand and had attended no lectures on the subject." Apparently Schücking was born an internationalist, and internationalist he remained, with von Bar as his councilor and guide and Hans Wehberg his own devoted disciple.

In addition to his work at the University of Marburg, Schücking became deeply interested in the peace movement. It was an interest which was to bring him great honor, although fraught with constant danger. The universities of his country were and are state institutions, and it was not in their interest to adopt policies opposed to the government of the day.

With the outbreak of the World War his position became more difficult. As Hans Wehberg informs us: "The attention of the military authorities had been directed towards Schücking at an early stage. In September 1915 he was forbidden by the General Staff in Cassel to correspond with foreign scholars on problems of international organization, to travel abroad and to defend his ideas on international organization, even in a purely theoretical manner."

With the downfall of the Imperial German Government, Walther Schückling became at once an outstanding figure. He was elected in 1919 to the German National Assembly which drafted the new Constitution. Elected to the Reichstag, he remained a member until 1928. Two years earlier, in 1926, Schücking was appointed Professor of International Law at Kiel (then the only chair in Germany devoted exclusively to international law); he was in addition Director of the Institute of International Law at the same university. The restrictions upon his teaching and his activity in the past dropped like chains from his hands. Indeed, he was specially authorized by the Minister of Education "to lecture on the history of the peace movement"!

In the outside world he was earlier honored, first as an associate and later as a member of the *Institut de Droit International*, and from 1930 until the day of his death five years later he was a Judge of the world's court at The Hague.

What were Walther Schücking's views on international law? They are to be found briefly but admirably stated in his introduction to Pufendorf's tractate, *De Officio Hominis et Civis Juxta Legem Naturalem Libri Duo* [1] from which we lift three paragraphs:

> In the history of international law two tendencies have struggled with one another for centuries and if it occasionally appeared as if one or the other were vanquished and stricken to the ground, it was not very long before it gave forth again powerful signs of life. The one dominating during the nineteenth century in general is the *positivistic*. It takes as its sole point of departure the law created by custom and conventions, consequently objectively produced. Its dangers lie in the fact that it often neglects to elaborate leading principles from the fullness of legal

[1] Published by the Carnegie Endowment for International Peace in the "Classics of International Law" series, 2 vols. (New York, 1927.)

> material available in international life, but still more in the denial of critical judgment in relation to the existing legal conditions and institutions.
>
> When new circumstances arise, the world employs new norms. It is the task of scholarship in this case to bear in advance the torch for the development of law. But whence does the scholar receive the light wherewith to enkindle this torch, if he occupies himself only with the material of positive law, which perhaps long since has ceased to be the "just law" which the nations need? In such circumstances particularly the other tendency of the science of international law, that of the natural law, regains increased meaning. It seeks to develop the law philosophically out of the idea of justice and the necessities of the nations. For centuries, in regard to the legal principles developed by it, it has laid claim to immediate validity.

This is Walther Schücking's credo.

Let us now lift another passage in which he states Pufendorf's views: "In the depth of his ethical thinking he [Pufendorf] places, as the title of his work indicates, the entire system of law under the stamp of the *concept of duty*. And this concept of duty is derived from the abstract ideal of sociability. His fundamental idea is the social man."

Upon the "social man" Schücking enlarges and comments:

> . . . The idea, "Thou art not alone here in the world," affords the point of departure for all legal relations; it holds for mankind as for states. This deep, moral world-philosophy stands towering over all the doctrine harking back to the Hegelian deification of the individual state: "The social ideal is the victorious war." For apart from the fact that the prudent knew, even before the World War, that modern war in our age of world commerce weakens the victors as well as the vanquished, the regulatory principle for state relations can be established only upon the simultaneous prosperity of all. This idea Pufendorf had already accurately discovered. But if the international economic life of the present has in unexpected ways wrenched the states loose from their previous isolation and brought them closer together, then the point of departure of all legal relations which furnished the soil for the doctrinal system of Samuel von Pufendorf, 'Thou art not alone in the world,' must be authoritative in increased measure today for the relations of states under international law.

At the session of the *Institut de Droit International* held at Rome on October 8, 1921, Schücking said that "the time had arrived in which it was necessary to create a new international law not only for states but for peoples, in order that the natural law of peoples to govern themselves should penetrate the law positive."

It is needless to state that Walther Schücking's views, which we have quoted, if not the law of today, are destined to become the law of the future.

We have already mentioned his membership in the Permanent Court of International Justice, and that it was honored by his presence. After Schücking's death, M. de Graaf, Minister of Foreign Affairs of The Netherlands, paid a tribute to his memory which we quote in the original French:

> Le connaître, c'était l'apprécier, et l'apprécier profondément.
>
> Schücking a été appelé à la place élevée qu'il occupait dans l'organisation internationale à cause de son savoir et à cause de sa probité. Il avait, et nous l'en admirions, le courage de ses opinions. Ces hautes qualités lui ont assuré le respect de tous, comme sa grande bonté lui a valu l'affection de ceux qui ont eu le bonheur de mieux connaître cet esprit d'élite.
>
> L'oeuvre de Schücking a été étroitement liée au développement de La Haye comme une des capitales où l'avancement du droit international dont il était un des maîtres a pris le plus d'essor. 'Das Werk vom Haag'—la phrase est un programme qui était le sien. Fortifier les assises de la paix en augmentant le respect pour le droit; travailler à mieux établir le droit en contribuant à doter la communauté des Etats d'une organisation plus efficace pour le règlement pacifique des différends internationaux—ces quelques mots résument l'existence fructueuse qui vient de s'éteindre.
>
> Sa vie entière a été au service de la cause que, jeune encore, il a faite sienne et à laquelle il est resté fidèle avec toute l'opiniâtre droiture qui le caractérisait. Je m'incline très respectueusement devant sa mémoire.

On the same occasion Sir Cecil Hurst, then President of the Permanent Court of International Justice, speaking in his mother tongue, said of his late colleague:

> Walther Schücking's fidelity to the ideals in which he so strongly believed made his life in many respects one of struggle and of suffering. Sometimes it caused an estrangement between him and persons whom he held in the highest esteem; it also put a strain on ties of another kind which were not less dear to him. Nevertheless, these difficulties never caused him to waver in his purpose.
>
> I am sure that, in a large measure, he drew his force to persevere from the exceptional happiness which he experienced in his family life. I trust that to the members of Walther Schücking's family the consciousness of this fact will alleviate the sorrow which has befallen them, will make them feel less bitterly the void left by his departure from among them; and, though words are of little avail to fill that void, it is my hope that the balm of human sympathy may to some extent deprive this bitterness of its sting.
>
> How widespread is that sympathy has been shown by the numberless messages and letters which have been received from all quarters. It is shown still more by the presence of those who have assembled today to pay him the last tribute of respect. It is shown by those who have graciously been pleased to send their representatives today to do him honor.
>
> These are personal tributes to a good man who, in the words of Shakespeare, "loved all, trusted a few and did wrong to none."

A further word. Walther Schücking honored the world in which he lived and bequeathed to the future the memory of a faultless character.

JAMES BROWN SCOTT

THE 1937 ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

The American Society of International Law will hold its 31st Annual Meeting in Washington at the Carlton Hotel on Thursday, Friday and Saturday, April 29, 30, and May 1. Following the custom of previous years, the meeting will open on Thursday evening with the presidential address devoted to the general program. The President's address will be followed by an address on the subject of the Inter-American Conference for the Maintenance of Peace recently held at Buenos Aires.

On Friday, April 30, the morning session will be devoted to the subject of International Agreements, and papers will be delivered on the following subtopics: (1) Constitutional Procedures for International Agreement, which will include not only treaties but Joint Resolutions as a substitute for treaties, and also Executive Agreements; (2) Executive Trade Agreements subdivided into (a) their constitutionality, (b) the embargo clause, and (c) most-favored-nation treatment.

At the afternoon session of Friday certain features of the law of war and neutrality will be considered. One topic will deal with Legal Aspects of Aircraft in Belligerent Operations, and another with the Effect of Governmental Controls on Neutral Duties.

In view of recent events, the Society could not very well omit the discussion of problems arising out of civil war, and the session of Friday evening, April 30, has been assigned to questions of this character. One paper will be devoted to the subject of Recognition of Insurgency and Belligerency, and another to Insurgency and Maritime Law.

No formal program has been assigned for the concluding session on Saturday morning, May first. As in past years, the greater part of the forenoon will be reserved for those members who may not have had the opportunity of taking part in the discussions from the floor which will follow the reading of the papers at each of the sessions on Thursday evening and Friday. During the last hour of the Saturday morning session reports of committees will be submitted and the Society's business will be transacted.

The 31st Annual Meeting will close with a banquet at the Carlton Hotel on Saturday evening, May first. Many members of the diplomatic corps in Washington will be present and it is hoped that there will be a goodly representation of the membership of the Society.

A detailed program giving the speakers on each of the topics assigned for discussion and also at the banquet will be sent to the members of the Society as soon as the Committee on Annual Meeting completes its work.

Any communications in regard to the program or meeting should be sent to the Chairman of the Committee, Professor Edwin M. Borchard, Yale Law School, New Haven, Conn.

GEORGE A. FINCH,
Secretary of the Society

PRESIDENT ROOSEVELT'S PEACE ARGOSY

At this critical juncture in world affairs, no nation in the fulfilment of its international obligations has a greater opportunity of service to mankind than the United States. We are second to none in financial and economic power; our industrial development, our geographical situation and military strength, taken with our freedom from entangling alliances, make it possible for the American people to throw this immense influence in almost any direction. The great states of Europe are involved in a complicated web of obligations and must necessarily devote the major portion of their resources and efforts to the defense of their peculiar national interests and traditional policies, and they are accustomed, one and all, to regard the United States as the greatest potential source of financial and political assistance. The tremendous power and influence of this country is rendered still more effective through the provisions of our Constitution, by the terms of which the exercise or direction of this power in foreign affairs is in great measure entrusted to the President and his Secretary of State, aided or thwarted, as the case may be, by the legislative branch. But the recent election has given President Roosevelt an overwhelming majority, so that as party leader he may count on adequate support both in the Senate and the House to secure the adoption of the major items of his foreign policy. And this is not all. His extraordinary popular and electoral vote has placed him on a pinnacle of executive prestige at the very moment when he sailed to the Conference of American States in an atmosphere of international cordiality. This friendly atmosphere has been built up through his own adherence to the Good Neighbor Policy, and through the effective initiation and conduct of Secretary Hull's commercial policy, based upon reciprocity treaties and extended to all like-minded countries through the effect of the unconditional most-favored-nation clause. The glamour of President Roosevelt's attendance at the opening of the Pan-American Conference and the cordial esteem in which Secretary Hull is held by all the delegates should prove of the greatest assistance in securing the desire of the Administration for the adoption of effective machinery by which the American Republics may preserve in this hemisphere peace among themselves and effectively insure the maintenance of their neutrality, if or when the European war breaks.

ELLERY C. STOWELL

THE INTERNATIONAL CONVENTION FOR REGULATION OF WHALING AND THE ACT OF CONGRESS GIVING EFFECT TO ITS PROVISIONS

BY WILLIAM ROY VALLANCE
Assistant Legal Adviser, Department of State

Origin of the Convention. The International Convention for the Regulation of Whaling was opened for signature at Geneva on September 24, 1931. The convention was the outcome of work begun in 1925 by a committee of experts. The Economic Committee submitted a report, dated June 14,

1930, to the Council of the League of Nations reading in part as follows:

> In pursuance of the decision taken by the Economic Committee at its twenty-ninth session (July 1929), a Committee of Experts [1] met at Berlin on April 3rd, 1930.
>
> In pursuance of the above-mentioned decision of the Economic Committee, the experts were requested to consider more particularly "whether and in what terms, for what species and in what areas, international protection of marine fauna could be established."
>
> The experts unanimously agreed that it would be possible to help the whaling industry by means of an international convention.
>
> After studying the Norwegian Law, which came into force on June 21st, 1929, a Royal Decree dated August 2nd, 1929, of notification by the Ministry of Commerce dated July 4th, as well as proposals submitted by some of the experts, the experts drew up a statement of certain principles and of certain rules which they submitted to the Economic Committee in the form of a draft convention.[2]

The further report dated September 19, 1931, and draft resolution presented by the Second Commission to the Assembly of the League of Nations on this subject and the convention will be found in two League of Nations publications referred to as A.64, 1931, II. B, and C. 642. M. 256, 1931, II. B.[3] On March 31, 1932, the final date for signature of the convention, it was signed at Geneva by the Honorable Hugh R. Wilson, American Minister at Bern, Switzerland. The report of the Secretary of State with a certified copy of the convention was submitted to the President on May 27, 1932.

Ratifications and accessions. The Senate gave its advice and consent to the ratification of the convention promptly, and on July 7, 1932, Mr. Hugh Wilson deposited the instrument of ratification of the United States with the Secretariat of the League of Nations, being the first signatory to the convention to deposit its ratification. This action was promptly followed by the deposit of the ratification of Norway on July 18, 1932. It is significant that Switzerland deposited its ratification of the convention on September 16, 1933, although there were no Swiss whaling vessels or reduction plants in Switzerland. It is understood that the Swiss Government desired to show its interest in the protection of wild life wherever possible and to show the interest of a small state in a convention which does not directly concern it.

The instrument of ratification of the convention by Italy was deposited on June 12, 1933, with the reservation "that the accession of the Italian Government to this convention can in no way constitute a precedent for future agreements providing for the limitation of fishing in extra-territorial sea."

Article 17 of the convention contained the unusual provision:

[1] Dr. Remington Kellogg, National Museum, represented the United States.

[2] League of Nations Documents, C.353.M.146.1930.II.

[3] See also Treaty Information Bulletin No. 32, May, 1932, p. 21. For further history of the whaling industry and proposed regulation, see *L'Exploitation des Richesses de la Mer*, by P. C. Jessup, *Académie de Droit International, Recueil des Cours* (1929), Vol. IV, pp. 403–514; also, this JOURNAL, Vol. 24 (1930), p. 751 *et seq.*

> The present convention shall enter into force on the ninetieth day following the receipt by the Secretary General of the League of Nations of ratifications or accessions on behalf of not less than eight members of the League or non-member states, including the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland.

Although eight governments had deposited instruments of ratification or accession, the coming into force of the convention was postponed on account of the delay of the British Government in taking action on the convention. In the course of the discussions in the Second Committee of the XIV (1933) Assembly, a member of the Norwegian delegation called attention to the delay, and Mr. Hacking, who represented the United Kingdom in the Second Committee, stated that the "delay was due solely to the pressure of essential legislation in Parliament so that the British authorities had not yet had time to deal with the convention."

The instrument of ratification on behalf of the United Kingdom of Great Britain and Northern Ireland was deposited with the Secretariat of the League of Nations on October 18, 1934, and by virtue of the provision contained in Article 17, above quoted, the convention came into effect on January 16, 1935, on which date it was proclaimed by the President of the United States.[4]

The following countries have ratified or acceded to the Whaling Convention: United States of America, Austria, Brazil, Canada, Czechoslovakia, Denmark, including Greenland, Ecuador, Egypt, Finland, France, Great Britain and Northern Ireland, not including colonies, protectorates, overseas territories or territories under suzerainty or under mandate exercised by the British Government, Italy, Latvia, Mexico, Monaco, New Zealand, The Netherlands, including Netherland Indies, Surinam, and Curaçao, Nicaragua, Norway, Poland, Sudan, Spain, Switzerland, Turkey, Union of South Africa and Yugoslavia.

An interesting report on the Convention for the Regulation of Whaling was made by the Special Committee of the United States Senate on Conservation of Wild Life Resources.[5]

Purpose of the Convention. The purpose of the convention is set forth in the report of September 19, 1931, above mentioned, as follows:

> The main object of the draft convention before the Second Committee is to secure the adoption by the greatest possible number of countries of certain rules intended to prevent, in the interests of the whaling industry itself, the destruction of a source of wealth available to all.
>
> The steady growth of this industry in the last few years, thanks to improvements in equipment and technique, has resulted in an ever larger annual increase in the number of *balaenoptera* killed. Estimates

[4] The convention is printed in this JOURNAL, Supp., Vol. 30 (1936), p. 167.

[5] Senate Committee Print, 73rd Cong., 2nd Sess., incorporating report pursuant to Senate Resolution 246, 71st Congress, entitled "Economics of the Whaling Industry with Relationship to the Convention for the Regulation of Whaling."

obtained from various sources show that, for several years past, the number taken has varied from 25,000 to 30,000 each season! For the season which has just closed, the enormous figure of 40,000 has been mentioned.

Past experience shows the necessity of making an effort to prevent the extinction of the species which are chiefly hunted by modern whalers.

Biologists are not as yet very well acquainted with this branch of science and it is impossible to determine the number of these animals which could be taken annually without endangering the species. In view of the fact, however, that certain species of whales are already practically extinct, it will be realized that those species which it is still profitable to capture are exposed to serious danger.

Reference is also made to the following extract from the report of the Secretary of State:

> The purpose of the convention is to secure effective international action for the preservation of whales from indiscriminate and wasteful slaughter. The convention prohibits the taking of right whales, which are deemed to include several varieties mentioned in Article 4, and the taking or killing of calves, immature whales, or females accompanied by calves. It prescribes certain details as to the parts of the whale from which the oil must be extracted, and that the wage contracts for the employment of gunners and crews shall be so drawn that the remuneration of the gunners and crews will depend to a considerable extent upon the size and species of the whales taken and the value and the yield of the oil.
>
> By Article 1 the contracting parties agree to take proper measures within the limits of their respective jurisdictions to ensure the application of the convention and the punishment of infractions. Article 8 and the articles following it contain certain engagements as to licensing of whaling vessels and furnishing statistics.

According to testimony given on February 25, 1936, by Mr. R. F. Fieldler, United States Bureau of Fisheries, before the Committee on Foreign Affairs, House of Representatives, the whale fishery on the west coast of North America captured in 1912, 2,053 whales, resulting in a production of whale oil of 2,297,851 gallons produced in seven shore factories. In 1935, 785 whales were captured with a production of 1,784,150 gallons of whale oil from four shore factories and one floating factory. In 1927, the maximum production of whale oil from this fishery was obtained amounting to 3,216,517 gallons of whale oil from 1,996 whales.[6] It is stated that the Norwegian Whaling Gazette for 1936 contained the following statement: "For example, the blue whale has, practically speaking, disappeared from these and Western Mexican waters."[7]

Dr. T. S. Palmer, formerly with the Biological Survey, Department of Agriculture, made the following statement regarding the necessity for action:

> About the time of the War of 1812, our vessels began to outfit for voyages extending over 2 or 3 years. A hundred years ago, 1835, I

[6] Hearings on S. 3413, 74th Cong., 1st Sess., p. 97.

[7] Hearings, *supra*, p. 101.

believe there were as many as 100 vessels operating in the Sea of Japan, between Japan and Chosen. In 1846, or thereabouts, we had something like 735 whaling vessels of American registry, and we had something like 40,000 people employed in the industry, and we had an investment of something like $40,000,000.

Last year, 1935, we had two shore stations in Alaska, and a floating factory off California, and we imported something like 3,000,000 gallons of oil.[8]

Legislative Acts to give effect to Convention—Law enacted by British Parliament. Although the coming into effect of the convention was postponed due to the delay in receiving the ratification of the United Kingdom, it is worthy of note that the British Parliament had, prior to the deposit of its instrument of ratification, enacted legislation to give effect to the convention. Such legislation was contained in the Whaling Industry (Regulation) Act, 1934,[9] which received Royal assent on July 31, 1934. Section 8 of the Act creates the position of "Whale Fishery Inspector" and authorizes him to "board or enter any ship or factory which he has reason to believe is being used for taking or for treating whales, and inspect the ship or factory and its plant and equipment." He may also in the case of such a ship "require the master and crew or any of them or in the case of such a factory as aforesaid, require the occupier or manager thereof and the employees therein or any of them, to produce all such licenses, records and other documents as the Inspector considers it necessary to inspect, and to answer all such inquiries as he considers it necessary to make." The Act further provides that any Whale Fishery Inspector "shall, during such period as may be specified in his authority, be entitled to remain on board the ship, to be provided with subsistence and accommodations therein and to be present at all operations in connection with the treating of whales on board the ship." A fine of £100 is imposed on every person who "obstructs or refuses facilities to such an Inspector in the discharge of his functions." The Board of Trade issued the Whaling Industry (Ship) Regulations on August 29, 1934 (No. 981), and a revision of them was issued on August 29, 1935.[10]

Legislation enacted by the United States. On August 13, 1935, Senator Peter Norbeck introduced in the Senate of the United States the Bill S. 3413 entitled "A bill to give effect to the convention between the United States and certain other countries for the regulation of whaling, concluded at Geneva, March 31, 1932 and for other purposes." Sections 2, 5, 10 and 14 of the bill were based upon the Migratory Bird Treaty Act approved July 3, 1918,[11] which gave effect to the Treaty concluded between the United States and Great Britain in Respect to Canada on August 16, 1916, for the Protection of Migratory Birds.[12] It will be recalled that the provisions of this Act

[8] Hearings, *supra*, p. 81. [9] 24 and 25 Geo. V, Chap. 49, 1934 Law Reports 418.

[10] Statutory Rules and Orders, 1935, No. 885. [11] 40 Stat., Pt. I, p. 755.

[12] 39 Stat., Pt. II, p. 1702; this JOURNAL, Supp., Vol. 11 (1917), p. 62. See also Convention for Protection of Migratory Birds and Game Mammals, concluded Feb. 7, 1936, between the United States and Mexico, and the Act of Congress approved June 20, 1936, 49 Stat. 1555; U. S. Code, Supp. II, Title 16, Secs. 703–709a.

were upheld in an opinion written by former Associate Justice Oliver Wendell Holmes in the case of Missouri *v.* Holland.[13] Sections 3, 4, 6, 8 and part of Sections 12 and 13 of the bill were taken from the convention. The bill was referred to the Senate Committee on Foreign Relations which submitted a favorable report on it on August 23, 1935,[14] and it passed the Senate August 24, 1935. The first session of the 74th Congress adjourned before action was taken on the bill in the House of Representatives.

When the second session of the 74th Congress convened on January 3, 1936, the Bill S. 3413 was considered by the House Committee on Foreign Affairs. The bill as it passed the Senate placed responsibility for the enforcement of the Act on the Secretary of the Treasury. As a result of further consideration by the House Committee it was brought out that the pending bill was similar to the Fur Seal Act of August 24, 1912,[15] entitled "An Act to give effect to the convention between the United States and Great Britain, Japan and Russia, for the preservation and protection of fur seals and sea otter which frequent the waters of the North Pacific Ocean, concluded at Washington, July 7, 1911" [16] in which the regulatory powers are vested in the President and it is made the duty of the Secretary of Commerce under the direction of the President to see that the said convention, the provisions of the Act and the regulations made pursuant thereto are executed and enforced. Furthermore the Bureau of Fisheries had compiled biological data respecting marine life and had charge of the issuance of various licenses. The bill was accordingly amended to place the responsibility for the enforcement of the Act also on the Secretary of Commerce, with the power to arrest placed in the Coast Guard and the customs officers[16a] of the Treasury Department, in officers of the Department of Commerce and in naval officers. Section 8 also provided that licenses for factories on shore and for ships should be issued by the Department of Commerce. Hearings were held on the bill by the House Committee on Foreign Affairs on February 11, 18, and 25, and March 3, 7, and 10, 1936, and the bill was reported to the House of Representatives with amendments on March 12, 1936. The report read in part as follows:

> Since the Middle Ages whales have been utilized in various ways and at certain times have been the basis of large and important industries employing thousands of men, not only in the United States but also in Europe. So far as the United States is concerned, an effort is being made to conserve the last remnant in our coastal waters of species formerly abundant and commercially important.

[13] 252 U.S. 416; this JOURNAL, Vol. 14 (1920), p. 459.

[14] Senate Report No. 1455, 74th Cong., 1st Sess.

[15] 37 Stat., Pt. I, p. 499, U.S.C., Title 16, Secs. 632–643A; this JOURNAL, Supp., Vol. 7 (1913), p. 140.

[16] For the convention, see 37 Stat., Pt. II, p. 1542; this JOURNAL, Supp., Vol. 5 (1911), p. 267.

[16a] See the Tariff Act of 1930, Sec. 527 (46 Stat. 741; U. S. Code 1934, Title 19, Sec. 1527), which prohibits the importation of any wild mammal or bird taken, killed, possessed or exported in violation of law or regulation of a foreign country.

> In the United States whale products are utilized chiefly for the following purposes: (1) Whale oil is converted into soap, and several million gallons are imported annually; (2) the flesh, entrails, and residue from processed blubber are converted into guano and tankage; (3) bones are converted into bone meal, fertilizer, and bone charcoal; and (4) considerable quantities of frozen whale meat are utilized in the manufacture of pet food.[17]

The bill received the approval of the President on May 1, 1936.[18]

In addition to the similarity to the Migratory Bird Treaty Act and Fur Seal Act above mentioned, this Whaling Act may be compared to the Act of Congress approved May 2, 1932, for the Protection of the Northern Pacific Halibut Fishery,[19] which was based upon the convention concluded on May 9, 1930, between the United States and Canada.[20]

Legislation enacted in other countries. Legislation on this subject has also been enacted in Norway,[21] Denmark,[22] and in Mexico.[23] Regulations on the subject have also been issued in Scotland,[24] Finland,[25] and in the Province of British Columbia.[26]

Regulations in the United States. Regulations under the convention were issued by the Secretary of Commerce and the Secretary of the Treasury and were approved by the President on October 9, 1936.[27] The first article provides that the Convention, the Whaling Treaty Act, and the Regulations "apply to all nationals, vessels, and boats of the United States in all the waters of the world, and to all persons, vessels, and boats in the United States, its territories and possessions, including the territorial waters thereof." Article 2 gives a list of the whales included within the terms of the Convention and the Act. Article 3 fixes the minimum length of whales which shall be deemed to be calves or suckling whales. Article 4 states that "the hunting, taking, capturing, killing, possession, sale, purchase, shipment, transportation, carriage, import, or export of any baleen or whalebone whale, or the possession, sale, purchase, shipment, transportation, carriage, import, or export of the products thereof, except as provided in the following article, shall be deemed compatible with the terms" of the Convention and permitted by the Regulations. Article 5 then specifies the whales which may not be so disposed of, and contains two exceptions, namely, for

[17] House Report No. 2154, 74th Cong., 2nd Sess.

[18] 49 Stat. 1246; this JOURNAL, Supp., Vol. 30 (1936), p. 198.

[19] 47 Stat. 142; United States Code, Title 16, Secs. 771–771–J.

[20] 47 Stat., Pt. 2, p. 1872; this JOURNAL, Vol. 25 (1931), p. 188.

[21] See Act of June 14, 1935, published in Legal Gazette on June 30, 1935.

[22] See *Lovtidende for Kongeriget Danmark*, 1934, pp. 578–580, 1789.

[23] See *Diario Oficial*, March 15, 1927.

[24] See Whale Fisheries (Scotland) Act, 1907, and Whaling Industry (Factory) (Scotland) Regulations, 1935, dated July 19, 1935.

[25] See Law of March 13, 1936, and Decree of April 3, 1936.

[26] See Order in Council of Feb. 17, 1931, pp. 28–30.

[27] See Federal Register, Oct. 17, 1936, Vol. 1, p. 1871.

"scientific purposes" and "by natives or Eskimos engaged in whaling who use only canoes or other native craft propelled by oars or sails, do not carry firearms, are not employed by others than natives or Eskimos, and are not under contract to deliver products of their whaling to any third person," subject to certain conditions. The sixth article excepts from the Regulations dolphins or porpoises, and disavows any intention to permit any act contrary to the laws and regulations of any State or Territory made for the purpose of giving further protection to whales when such laws and regulations are not inconsistent with the Convention or the Whaling Treaty Act.

Statistics. The Norwegian Government has published seven pamphlets containing statistics with regard to the whaling industry. These pamphlets are very valuable as they disclose the extent to which the whaling industry has changed. The last pamphlet, published on June 15, 1936, contains the following interesting statement:

> According to the resolution of the Storting of June 13, 1935, a series of amendments were on June 14, 1935, adopted in the Norwegian Whaling Act. By order in Council of June 21, 1935, there were also issued new regulations, whereby it was, *inter alia*, provided that until further notice catching of baleen whales southward of 40° South latitude may only be carried on during the period December 1, to March 15, both days inclusive.
>
> The British Whaling Act of August 29, 1935, established the same time limitation.[28]

Conclusions The international coöperative action taken by the nations who are parties to the International Convention for the Regulation of Whaling is another example of what can be accomplished by friendly assistance between nations in the accomplishment of objects which are of mutual advantage to all of them. The foresight shown in preservation of whales will be of great benefit to future generations. The Fur Seal Convention, the Migratory Bird Convention and the Halibut Fishery Convention will doubtless be followed by further international agreements for the preservation of plant and animal life.[29] Such mutual coöperation between nations in these activities will doubtless contribute to a better era in international relations.

[28] International Whaling Statistics, VII, Edited by The Committee for Whaling Statistics Appointed by the Norwegian Government.

[29] See, for example, the International Convention for the Protection of Fauna and Flora, signed at London, Nov. 8, 1933. The Institute of Pacific Relations is studying the fisheries of the Pacific.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD AUGUST 16–NOVEMBER 15, 1936

(Including earlier events not previously noted)

WITH REFERENCES

Abbreviations: *B. I. N.*, Bulletin of International News; *C. S. Monitor*, Christian Science Monitor; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary papers; *Cong. Rec.*, Congressional Record; *Cur. Hist.*, Current History (New York Times); *Europe*, L'Europe Nouvelle; *Ex. Agr. Ser.*, U. S. Executive Agreement Series; *Geneva*, A Monthly Review of International Affairs; *G. B. Treaty Series*, Great Britain Treaty Series; *I. L. O. B.*, International Labor Office Bulletin; *L. N. M. S.*, League of Nations Monthly Summary; *L. N. O. J.*, League of Nations Official Journal; *L. N. T. S.*, League of Nations Treaty Series; *P. A. U.*, Pan American Union Bulletin; *Press Releases*, U. S. State Department; *R. A. I.*, Revue aëronautique international; *T. I. B.*, Treaty Information Bulletin, U. S. State Department; *U. S. T. S.*, U. S. Treaty Series.

April, 1936

15 FRANCE—GREAT BRITAIN. Signed convention supplementary to convention of Feb. 2, 1922, to facilitate conduct of legal proceedings. *France* No. 1 (1936).

June, 1936

19 DENMARK—GREAT BRITAIN. Signed agreement supplementary to agreement of April 24, 1933, relating to trade and commerce. *Denmark* No. 1 (1936), *Cmd.* 5206.

July, 1936

13 COMPARATIVE LAW ACADEMY. International Academy of Comparative Law held 12th annual session at The Hague. *Société de législation comparée. Bulletin*, July–Sept., 1936, p. 341.

20 COLOMBIA—PERU. Signed four conventions at Lima: (1) Interchange of publications, (2) intellectual and cultural exchange, (3) information on civil status, (4) the census. *P. A. U.*, Nov. 1936, p. 887.

20 ECUADOR—UNITED STATES. Reciprocal agreement providing for waiver of passport visa fees announced. *T. I. B.*, Aug. 1936, p. 18.

August, 1936

1 BELGIUM—NETHERLANDS. Netherlands Government filed with Permanent Court of International Justice an application instituting proceedings against Belgium in Water of the Meuse River case. *L. N. M. S.*, Aug. 1936, p. 247.

1 *to November* 13 NON-INTERVENTION IN SPAIN. On Aug. 1, Leon Blum, French Foreign Minister, addressed appeal to British and Italian Governments for adoption and observance of an agreed arrangement for non-intervention in Spain. *N. Y. Times*, Aug. 2, 1936, p. 1. British reply of Aug. 4 agreed, provided Italy also consented, and suggested extension of negotiations to include other Powers. *N. Y. Times*, Aug. 5, 1936, p. 3. Italy's reply on Aug. 6 accepted conditionally. France extended her proposals to Germany, Soviet Russia and Portugal and draft agreement for non-intervention was forwarded to governments concerned as soon as they had agreed to coöperate. Germany consented with reservations. Text: *Times* (London), Aug. 19, 1936, p. 10. Italy's reply dated Aug. 21 accepted

with two reservations. Text: *Times* (London), Aug. 22, 1936, p. 10. An embargo on arms to Spain, effective at once, was announced by Germany, France and U.S.S.R. on Aug. 24, Portugal on Aug. 27, and Italy on Aug. 28. About 18 other European nations agreed to associate themselves with the agreement. On Aug. 31, eleven countries approved formation of an international committee to exchange information on the imposition of an arms embargo. *N. Y. Times*, Sept. 1, 1936, p. 13. The opening meeting of the International Committee for the application of agreement regarding non-intervention in Spain was attended by representatives of 26 countries. Official statement: *Times* (London), Sept. 10, 1936, p. 12. Portugal refused to attend the meeting. Text of note: *Times* (London), Sept. 11, 1936, p. 13. Text of all notes exchanged between the French and other governments constituting the non-intervention agreement: *Le Temps*, Sept. 11, 1936; *L'Europe Nouvelle*, Sept. 26, 1936, Supplement 44. A second meeting of the Committee was held on Oct. 9 to consider Russian and Italian charges. Text of statement: *N. Y. Times*, Oct. 10, 1936, p. 1. At third meeting, held on Oct. 28, a letter from Soviet delegation repeated charges that Germany, Italy and Portugal were supplying arms to rebel forces, and declared itself no longer bound by non-intervention agreement to any greater extent than remaining participants. *N. Y. Times*, Oct. 24, 1936, p. 1; *Times* (London), Oct. 24, 1936, p. 14. On Oct. 27, Portugal withdrew from the Committee but was later cleared of charges against her. At later meetings of the Committee, charges of Italy against Soviet Russia were considered. *C. S. Monitor*, Nov. 13, 1936, p. 1. On Nov. 6, the report of the secretary of the International Committee was published as British Parliamentary Paper *Cmd.* 5300. *See also B. I. N.*, Aug. 15–Nov. 21, 1936.

5 STRAITS CONVENTION. On Aug. 5, Turkish Government sent note to League of Nations concerning rules provisionally applied in the Straits; total tonnage in the Black Sea of respective fleets of the littoral powers (Aug. 18) and suspension of activities of the Straits Commission (Aug. 24). *L. N. O. J.*, Aug./Sept. 1936, p. 931.

7 SPAIN—UNITED STATES. State Department sent instructions to Embassy and all United States consulates in Spain, making clear its attitude toward the civil conflict in Spain, with special reference to U. S. neutrality law. *Press Releases*, Aug. 15, 1936, p. 152.

10 BRAZIL—GREAT BRITAIN. Exchanged notes on behalf of Newfoundland regarding commercial matters. *G. B. Treaty Series*, No. 24 (1936), *Cmd.* 5267.

17 URUGUAY. In an effort to bring Spanish civil war to a peaceful end, Don José Espalter, the Foreign Minister of Uruguay, sent notes to all Foreign Ministers of governments who will participate in Inter American Conference at Buenos Aires, suggesting offer of mediation to Spain. *Times* (London), Aug. 18, 1936, p. 9. Reply of United States Dept. of State declined to participate in mediation move in Spain. Text of notes: *Press Releases*, Aug. 22, 1936, pp. 175–176; *N. Y. Times*, Aug. 21, 1936, p. 1, *C. S. Monitor*, Aug. 21, 1936, p. 1.

19 KAMERUN INCIDENT. On Aug. 19 Spanish Government warships stopped German steamer *Kamerun* seven miles off Spanish coast, then allowed her to proceed to Genoa. *N. Y. Times*, Aug. 20, 1936, p. 3. German Government lodged diplomatic protest in Madrid and on Aug. 20 issued orders to its warships patrolling off Spain to resist if Spanish Government ships again interfered with German merchantmen outside three-mile limit. *N. Y. Times*, Aug. 21, 1936, p. 1; *C. S. Monitor*, Aug. 22, 1936, p. 1.

20 SCANDINAVIAN CONFERENCE ON LEAGUE OF NATIONS REFORM. Foreign Ministers of the four Scandinavian countries met at Copenhagen. *B. I. N.*, Aug. 29, 1936, p. 13; *N. Y. Times*, Aug. 21, 1936, p. 2.

25 BOLIVIA—PARAGUAY. Signed agreement for resumption of diplomatic relations on Aug. 25, following declaration by the Chaco Peace Conference in Buenos Aires on Aug. 22 that repatriation was completed. *P. A. U.*, Oct. 1936, p. 808; *Press Releases*, Aug. 29, 1936, p. 198.

25 FRANCE—UNITED STATES. Exchanged ratifications of additional extradition convention, signed at Paris, April 23, 1936. *T. I. B.*, Aug. 1936, p. 8.

25 SPAIN—UNITED STATES. Note from Secretary Hull, delivered to Foreign Office of Spain, declared that United States would not recognize validity of war zone around certain Spanish ports unless effective blockade was maintained. Text: *Press Releases*, Aug. 29, 1936, p. 192; *N. Y. Times*, Aug. 27, 1936, p. 3.

26 AUSTRIA—GERMANY. Signed agreement in Berlin regulating questions of trade, travel and payments, together with agreement relaxing passport regulations for people living on frontier of both countries. *B. I. N.*, Sept. 12, 1936, p. 15.

26 EGYPT—GREAT BRITAIN. Treaty of alliance signed at London, provides for eventual termination of British military occupation, and gradual abolition of capitulatory régime. *C. S. Monitor*, Aug. 26, 1936, p. 5. Summary of treaty: *N. Y. Times*, Aug. 28, 1936, p. 14. Text: *Times* (London), Aug. 28, 1936, p. 7. *Cmd.* 5270.

27 BELGIUM—CHILE. Signed commercial treaty at Santiago de Chile. *N. Y. Times*, Aug. 29, 1936, p. 2.

27 GREAT BRITAIN—NETHERLANDS. Exchanged notes for reciprocal exemption from taxation of air transport profits. Text: *G. B. Treaty Series*, No. 26 (1936).

27 ITALY—NORWAY. Signed agreement for resumption and regulation of trade. *B. I. N.*, Sept. 12, 1936, p. 21.

28 NORWAY—RUSSIA. Note from Soviet Government repeating accusations against Leon Trotsky and demanding extradition, handed to Foreign Office of Norway. *Times* (London), Aug. 31, 1936, p. 11; *N. Y. Times*, Aug. 30, 1936, p. 1. Reply rejected Soviet demands. *N. Y. Times*, Sept. 4, 1936, p. 5.

30 *to September* 10 KANE (U. S. destroyer). On Aug. 30 Secretary of State Hull issued statement regarding attack on an American naval vessel (destroyer *Kane*) about 40 miles off the Spanish coast by an unidentified monoplane. *Press Releases*, Aug. 29, 1936, p. 193. He also sent telegraphic instruction to American Embassy at Madrid relative to bombing of the *Kane* on Aug. 30. American Consul at Seville instructed to make similar representations informally to Gen. Franco. Text: *Press Releases*, Sept. 5, 1936, p. 201. Official communication to State Department on Sept. 8 from Gen. Franco, commander-in-chief of Spanish rebels, admitted possibility of error and expressed regrets. *Press Releases*, Sept. 12, 1936, p. 225; *N. Y. Times*, Sept. 9, 1936, p. 8. Madrid Government's reply to State Department inquiries brought formal note, deploring the incident, and disclaiming all responsibility for the incident. *N. Y. Times*, Sept. 9, 1936, p. 8.

31 GERMANY—POLAND. Signed two agreements in Berlin regulating payment of railway transit indebtedness until end of 1936, and settlement of arrears by "financial counter-claims" of Germany against Poland. *Times* (London), Sept. 2, 1936, p. 9.

September, 1936

1 NICARAGUA—UNITED STATES. Trade agreement, signed Mar. 11, 1936, proclaimed by the President of Nicaragua on Aug. 31 and by the President of the United States on Sept. 1. *T. I. B.*, Sept. 1936, p. 12.

2 GREAT BRITAIN—TURKEY. Signed agreement respecting trade and clearing (with protocol). Text: *G. B. Treaty Series*, No. 25 (1936).

2–3 LONDON NAVAL TREATY. Japan's reply of Sept. 2 to the British note of July 15 invoking the "escalator" clause of the London Naval Treaty of 1930, proposed to retain extra submarines as well as destroyers. *Times* (London), Sept. 3, 1936, p. 12; *B. I. N.*, Sept. 12, 1936, p. 23. On Aug. 15, United States notified British Government they would follow British action in retaining 40,000 tons of destroyers above 1930 Naval Treaty limits after end of 1936. *B. I. N.*, Sept. 12, 1936, p. 33.

5–12 WORLD POWER CONFERENCE. Held third congress in Washington in connection with second congress of the International Commission on Large Dams, attended by 3,000 delegates from 52 nations. Development and use of national resources in all nations were discussed. *N. Y. Times*, Sept. 6–13, 1936; *U. S. News*, Sept. 14, 1936, pp. 3 and 15; *New Republic*, Sept. 23, 1936, p. 169.

6 FRANCE—POLAND. Initialed political military agreement in Paris, reviving old alliance. *Foreign Policy Bulletin*, Sept. 18, 1936; *N. Y. Times*, Sept. 7, 1936, p. 3.

7–26 PALESTINE. On Sept. 7, text of British Government's "statement of policy" made public. *Times* (London), Sept. 8–9, 1936, p. 12. On Sept. 13, Higher Arab Committee issued its reply. *Times* (London), Sept. 14, 1936, p. 14. On Sept. 26, the Palestine Martial Law (defense) Order in Council was published in London Gazette. Text: *Times* (London), Sept. 30, 1936, p. 11.

8 ETHIOPIA. Emperor Haile Selassie appealed to peoples of the world to save the Ethiopian people, claiming that two-thirds of country was still unconquered. Text: *Times* (London), Sept. 9, 1936, p. 11.

9 FRANCE—SYRIA. Signed treaty in Paris by which Syria will become independent state and enter League of Nations in three years, ending mandatory régime. *Times* (London), Sept. 11, 1936, pp. 13 and 15; *N. Y. Times*, Sept. 10, 1936, p. 19. Text: *L'Europe Nouvelle*, Nov. 28, 1936, Suppl. No. 48.

10 INTERNATIONAL LAW ASSOCIATION. Thirty-ninth congress opened in Paris. *N. Y. Times*, Sept. 11, 1936, p. 14.

13–14 LITTLE ENTENTE CONFERENCE. Held at Bratislava, by Foreign Ministers of Czechoslovakia, Rumania and Yugoslavia. Text of final communiqué emphasizing solidarity of the three states and fidelity to the League of Nations. *Central European Observer*, Sept. 18, 1936, p. 291; *N. Y. Times*, Sept. 15, 1936, p. 32.

14 BOLIVIA—PERU. Signed convention on social and Indian studies and legislation by which both nations agree to exchange all laws issued relating to their native races, legislation of Indian communities, etc. *P. A. U.*, Dec. 1936, p. 968.

14 BOLIVIA—PERU. Signed in Lima a general pact of friendship and non-aggression, providing mutual guarantees and creating an investigation and conciliation commission, composed of one delegate from each country. *P. A. U.*, Dec. 1936, p. 968.

14 ITALY—POLAND. Signed economic agreement in Rome providing for increase in deliveries of Polish coal. *B. I. N.*, Sept. 26, 1936, p. 280.

17–23 BROADCASTING CONFERENCE. Intergovernmental conference on broadcasting in cause of peace held in Geneva with representatives of 37 countries. Convention signed on Sept. 23 by 18 countries, and final act by 28 countries. *L. N. M. S.*, Sept. 1936, p. 269. Texts: *L. N. Docs.* C.399.M.252.1936.XII, and C.399(a).M.252-(a)1936.XII.

17–21 INTERNATIONAL PARLIAMENTARY COMMERCIAL CONFERENCE. Twenty-first assembly held at Bucharest, Rumania. *T. I. B.*, Sept. 1936, p. 11.

17 LEAGUE OF NATIONS REFORM. Secretariat of the League published study of proposals for reform of the Covenant submitted by members of the League (France, Uruguay, U. S. S. R., Argentina, New Zealand, Lithuania, Norway, Latvia). *L. N. M. S.*, Aug. 1936, p. 234; *L. N. Doc.* C.376.M.247.1936.VII.

18–25 AËRIAL LEGAL EXPERTS. International technical committee of aërial legal experts represented by 16 countries held session in Berne, Switzerland, and adopted two draft conventions: (1) assistance and salvage of aircraft, (2) aërial collisions. *T. I. B.*, Oct. 1936, p. 14.

18 *to October* 10 LEAGUE OF NATIONS COUNCIL. Held 93d session in new Palace of the League, with Manual Rivas Vicuna of Chile presiding. Economic, financial, mandate and other reports were considered, and the Council participated in election of three new judges of the Permanent Court of International Justice. *L. N. M. S.*, Sept. 1936.

18 LOCARNO CONFERENCE. On Sept. 18, Mr. Eden handed to diplomatic representatives of France, Germany, Italy, and Belgium a note containing formal invitation to conference in London of so-called Locarno Powers before the end of October. *B. I. N.*, Sept. 26, 1936, pp. 1–11. Summary of previous negotiations. *Times* (London), Sept. 19, 1936, p. 12.

21 GREAT BRITAIN—NORWAY. Official statement on Anglo-Norwegian whaling dispute made public, regarding agreement upon measures to be taken to prevent excessive inroads into the stock of whales. *Times* (London), Sept. 22, 1936, p. 13.

21 *to October* 10 LEAGUE OF NATIONS ASSEMBLY. Seventeenth ordinary session held at Geneva, with 52 states represented. Saavedra Lamas of Argentina elected president. Address on regional arbitration: *Times* (London), Sept. 22, 1936, p. 14. New Zealand and Sweden were elected as non-permanent members of Council to succeed Argentina, Australia and Denmark. Two temporary seats on Council were created for China and Latvia for the period 1936–1939. Three new judges of the Permanent Court of International Justice were elected. (Hudson, Hammarskjold, and Cheng Tien-hsi.) A commission to include all states members to deal with League reform was set up. *L. N. M. S.*, Sept./Oct. 1936. The Third Committee, sitting for the first time since 1932, agreed to French proposal that Council be requested to convoke the Bureau (Steering Committee on Disarmament). Rules of procedure of Assembly were amended. Text of resolutions: *L. N. M. S.*, Oct. 1936, p. 321.

22 SPAIN—URUGUAY. Diplomatic relations severed by Uruguay, following attack on Uruguayan citizens. *N. Y. Times*, Sept. 23, 1936, p. 7; *Times* (London), Sept. 23, 1936, p. 12.

23 *to October* 18 CHINA—JAPAN. On Sept. 23, a Japanese sailor was killed and two wounded at Shanghai in the International Settlement. Japanese troops took control and Japanese marines took possession of part of Chapei in the Chinese part of Shanghai. *N. Y. Times*, Sept. 24, 1936, p. 1. Japan's proposals to remove causes of Sino-Japanese friction. *N. Y. Times*, Sept. 26, 1936, p. 9; Sept. 27,

1936, IV, 6. On Oct. 1, Nanking Central Government refused to accept Japanese demands and countered with five demands of its own. Summary: *N. Y. Times*, Oct. 11, 1936, p. 1. Hangchow negotiations and list of Japan's seven demands. *N. Y. Times*, Oct. 19, 1936, p. 13. Editorial Research Reports (Washington), Oct. 26, 1936. On Nov. 11, Nanking Government issued note to foreign embassies requesting evacuation of all foreigners from certain territory while measures for suppression of bandits were being taken. *N. Y. Times*, Nov. 12, 1936, pp. 1, 12.

25 AUSTRIAN FINANCES. Financial control of Austria terminated by League of Nations Council on presentation of Financial Committee's report. *L. N. M. S.*, Sept. 1936, p. 268.

25 INTERNATIONAL MONETARY AGREEMENT. On Sept. 25, the Secretary of the Treasury issued statement that the Government of the United States would coöperate with Great Britain and France to stabilize international exchange rates at resulting new levels. Text: *Press Releases*, Sept. 26, 1936; *N. Y. Times*, Sept. 26, 1936, p. 1; *U. S. News*, Sept. 28, 1936, p. 3. Text of British official statement: *Times* (London), Sept. 25, 1936, p. 12.

28 SIMPSON, LAWRENCE B. Based solely on charge of sedition, National Socialist tribunal sentenced American seaman to three years in penitentiary. *N. Y. Times*, Sept. 29, 1936, p. 1.

30 ECUADOR—PERU. Arbitration commission for settlement of border dispute opened sessions in Washington. Text of President Roosevelt's welcome and replies of chairmen of delegations. *N. Y. Times*, Oct. 1, 1936, p. 25; *P. A. U.*, Nov. 1936, p. 833.

30 GERMAN DECLARATION ON CURRENCY. Joint declaration, issued by Reich Government and Reichsbank, read by Dr. Schacht to central committee of the Reichsbank, stated that the mark would not be devaluated. *Times* (London), Oct. 1, 1936, p. 11. Text: *Times* (London), Oct. 1, 1936, p. 4.

30 SPAIN. Spanish delegation to League of Nations published in French the notes to non-intervention Powers and annexed notes to Germany, Italy and Portugal. The note, dated Sept. 15, to the non-intervention Powers demands "raising of the embargo on the export of arms to the Spanish Government and rigorous prohibition of the supplying of war materials to the Rebels." *N. Y. Times*, Oct. 1, 1936, p. 2.

October, 1936

1 BULGARIA—ITALY. Signed agreement for resumption and regulation of trade and financial relations. *B. I. N.*, Oct. 10, 1936, p. 28.

2 JAPAN—RUSSIA. Reached agreement on dispute over fishing rights in the Pacific, after 18 months' negotiations. *N. Y. Times*, Oct. 3, 1936, p. 25.

3 FINLAND—UNITED STATES. President Roosevelt proclaimed trade agreement signed May 18, 1936. *Press Releases*, Oct. 3, 1936, p. 289; *T. I. B.*, Oct. 1936, p. 14.

3 GREAT BRITAIN—SAUDI ARABIA. Agreement arranged by exchange of notes to extend treaty signed at Jedda on May 20, 1927, for seven years. *Times* (London), Oct. 9, 1936, p. 13.

6–24 MARITIME LABOR. Two maritime sessions of the International Labor Conference were held in Geneva, with 33 states represented. Six conventions and two recommendations were adopted, including provision for an eight-hour day, a

three-watch system aboard all steamers of more than 2,000 tons, and a convention raising minimum age for employment at sea from 14 to 15 years. Resolution to convoke another economic conference. *I. L. O. M. S.*, Sept./Oct. 1936; *N. Y. Times*, Oct. 25, 1936, p. 24.

6 MEXICO—UNITED STATES. Signed convention for recovery of stolen motor vehicles, airplanes, etc. *N. Y. Times*, Oct. 7, 1936, p. 15; *Press Releases*, Oct. 10, 1936, p. 297; *T. I. B.*, Oct. 1936, p. 19.

7 DENMARK—UNITED STATES. President Roosevelt proclaimed the supplementary extradition convention of May 6, 1936, ratifications of which were exchanged on Sept. 30. *T. I. B.*, Oct. 1936, p. 12.

8 GREAT BRITAIN—PERU. Signed most-favored-nation commercial and naval treaty to supplement existing pact. *C. S. Monitor*, Oct. 8, 1936, p. 4.

8 PERMANENT COURT OF INTERNATIONAL JUSTICE. Mr. Manley O. Hudson of the United States, Herr Hammarskjold of Sweden, and Dr. Cheng Tien-hsi of China, were elected judges by the League Assembly for seats vacant by death of Herr Walther Schücking, and resignations of Mr. Frank B. Kellogg and Dr. Wang Chung-hui. *L. N. M. S.*, Oct. 1936, p. 319; *N. Y. Times*, Oct. 9, 1936, p. 10.

13 CURRENCY STABILIZATION. Arrangement between the United States, Great Britain and France, for purchase and sale of gold in connection with monetary stabilization agreement of Sept. 25, 1936, announced by the Treasury. Text: *T. I. B.*, Oct. 1936, p. 17; *N. Y. Times*, Oct. 13, 1936, pp. 1, 6. Feature article: *N. Y. Times*, Oct. 18, 1936, IV, p. 10; *Contemporary Review*, Dec. 1936, p. 737.

14 BELGIUM'S NATIONAL POLICY. In a speech to his Council of Ministers, King Leopold announced new defence policy and resumption of pre-war neutrality. *N. Y. Times*, Oct. 15–16, 1936, p. 1; *Times* (London), Oct. 15–16, 1936, p. 14; *Foreign Policy Bulletin*, Oct. 23, 1936.

14 PAN AMERICAN UNION. Dr. Pedro de Alba of Mexico elected to the position of assistant director of the Pan American Union. *P. A. U.*, Dec. 1936, p. 915.

16 MUNITIONS IN FRANCE. Pierre Cot, Foreign Minister, announced that all factories manufacturing airplane and aviation motors to fill government contracts are to be nationalized at once. *N. Y. Times*, Oct. 17, 1936, p. 1.

19–26 TELEGRAPH CONFERENCE. Fifth meeting of International Consulting Committee on Telegraphs held at Warsaw, Poland. Summary of proposals; *Press Releases*, Nov. 21, 1936, p. 399.

19 LITTLE ENTENTE. Economic Council of Little Entente—Rumania, Yugoslavia, Czechoslovakia—meeting in Bucharest, announced decision on postal union and unification of telegraph and telephone services among states of Little Entente, Greece and Turkey. *N. Y. Times*, Oct. 21, 1936, p. 6.

22 CANADA—GERMANY. Signed provisional trade agreement and a payments agreement to remain in force for one year. These were based on reciprocal most-favored nation treatment. *B. I. N.*, Nov. 21, 1936, p. 19; *N. Y. Times*, Oct. 26, 1936, p. 1.

23 GERMANY—ITALY. Both countries announced mutual agreement to consult and collaborate on all problems affecting parallel interests in European diplomacy and economy. *N. Y. Times*, Oct. 24, 1936, p. 1. Six points of the accord: *N. Y. Times*, Oct. 26, 1936, p. 1; *Times* (London), Oct. 26, 1936, pp. 13–14.

23 PORTUGAL—SPAIN. Diplomatic relations suspended by Portugal. *N. Y. Times*, Oct. 24, 1936, p. 1.

31 BRITISH MUNITIONS INQUIRY. Royal Commission on Private Manufacture of and Trading in Arms issued its report after twenty months of labor. Nationalization of British arms not approved. *N. Y. Times*, Nov. 1, 1936, p. 7. Findings: *Times* (London), Nov. 2, 1936, p. 14; Text: *Cmd.* 5292.

31 *to November 7* INTER-AMERICAN CONFERENCE FOR THE MAINTENANCE OF PEACE. List of American delegates made public. *Press Releases*, Oct. 31, 1936, p. 348. On Nov. 1, President Roosevelt received invitation to attend. *N. Y. Times*, Nov. 8, 1936, p. 39. American delegation sailed on Nov. 7. Statement of Secretary Hull and broadcast address by President Roosevelt. *Press Releases*, Nov. 7, 1936, p. 372.

November, 1936

4 GERMANY. Issued order making it obligatory for holders of German foreign bonds, acquired after July 12, 1931, and of foreign securities not quoted on an exchange, to offer their holdings to the Reichsbank. *B. I. N.*, Nov. 21, 1936, p. 436.

6. GREAT BRITAIN—ITALY. Signed commercial agreement in Rome. Summary: *Times* (London), Nov. 12, 1936, p. 13; *N. Y. Times*, Nov. 10, 1936, p. 17. Text: *Cmd.* 5306.

6 SUBMARINES IN WAR. Procès-verbal embodying rules governing operation of submarines in war was signed in London by Great Britain, France, Italy, Japan, Irish Free State, United States of America and Australia, Canada, India, New Zealand and South Africa. *N. Y. Times*, Nov. 7, 1936, p. 6. Text of rules: *Times* (London), Nov. 7, 1936, p. 11.

7 SPAIN. Government withdrew to Valencia and a Junta under General Miaja took command in Madrid. *Times* (London), Nov. 9, 1936, p. 1.

8 AUSTRIA—ITALY. Signed trade agreement increasing preferences accorded to imports from that country. *B. I. N.*, Nov. 21, 1936, p. 31.

9 REPARATIONS PAYMENTS. Statement made in British Parliament that total payments in cash by Germany for reparations and cost of occupation amounted to 7,691 million gold marks. *B. I. N.*, Nov. 21, 1936, p. 443.

9 STRAITS CONVENTION. Document ratifying the new convention concluded at Montreux on July 20, 1936, superseding that of 1923, giving Turkey right to refortify the Dardanelles, was signed at Paris by representatives of France, Great Britain, Soviet Russia, Turkey, Bulgaria, Rumania, Yugoslavia and Greece. *Times* (London), Nov. 10, 1936, p. 15; *N. Y. Times*, Nov. 10, 1936, p. 17.

10 GUATEMALA—SPAIN. Government of General Franco recognized by Guatemala. *Wash. Post.*, Nov. 11, 1936, p. 3.

11 ETHIOPIAN CONQUEST. Recognized by Austria and Hungary. *Times* (London), Nov. 12, 1936, p. 14.

11 INTERNATIONAL RED CROSS COMMITTEE. Protested to authorities in Madrid, and other cities, against the taking of hostages as being incompatible with methods of civilized warfare. *B. I. N.*, Nov. 21, 1936, p. 459.

11 PERMANENT MANDATES COMMISSION. Closed 30th session after deciding to hold extraordinary session in spring of 1937 to consider problems of Palestine. *B. I. N.*, Nov. 21, 1936, p. 32.

11 REDLICH, JOSEF. Deputy judge of the Permanent Court of International Justice died in Vienna. *N. Y. Times*, Nov. 12, 1936, p. 27.

11–12 ROME PROTOCOLS CONFERENCE. Conference of Foreign Ministers of the three states signatories of the Protocols of Rome (Austria, Hungary, Italy) for discussion of Danube Basin, was held in Vienna. It marked attempt of Italy to harmonize Rome Protocols with Austro-German Declaration of July 11, 1936. *B. I. N.*, Nov. 21, 1936, p. 423. Communiqué: *Times* (London), Nov. 13, 1936, p. 15; *Foreign Policy Bulletin*, Nov. 20, 1936.

13 FRANCE—LEBANON. Signed treaty in Beirut, Syria, granting independence to Lebanese Republic after a period of three years. *B. I. N.*, Nov. 21, 1936, p. 39.

13 ITALIAN LAW COURTS. Official sources announced that abolition of all civil and criminal law courts in Italy had been decided upon by Mussolini, to be replaced by special boards or committees from various divisions of the corporate state. *N. Y. Times*, Sept. 14, 1936, p. 1.

14 LITTLE ENTENTE. Governments of Czechoslovakia, Rumania and Yugoslavia issued joint statement declaring rearmament without consultation will be met with resistance. *N. Y. Times*, Nov. 15, 1936, p. 36; *Times* (London), Nov. 16, 1936, p. 11.

14 RIVERS IN GERMANY. Germany formally denounced Part 12 (Sect. 2, Ch. 3 and 4, and Sect. 6) of the Treaty of Versailles relating to internationalization of Rhine, Danube, Elba, Oder, Moselle and Niemen rivers and to the Kiel Canal. Delegates from International River Commission also withdrew. *B. I. N.*, Nov. 21, 1936, p. 18; *N. Y. Times*, Nov. 15, 1936, p. 1. Summary: *Times* (London), Nov. 16, 1936, p. 11.

INTERNATIONAL CONVENTIONS

AIR TRAFFIC. Warsaw, Oct. 12, 1929.
Ratification deposited: Belgium. July 13, 1936. *T. I. B.*, Sept. 1936, p. 10.

AIRCRAFT ATTACHMENT. Rome, May 29, 1933.
Ratification deposited: Italy. Sept. 29, 1936. *T. I. B.*, Oct. 1936, p. 14.

AIRPLANE TRANSPORT. Buenos Aires, June 19, 1935.
Ratification: Ecuador. June 10, 1936. *T. I. B.*, Sept. 1936, p. 11.

ALIENS STATUS. Havana, Feb. 20, 1928.
Ratification deposited: Ecuador. Sept. 4, 1936. *T. I. B.*, Sept. 1936, p. 7.

ARGENTINE ANTI-WAR PACT. Rio de Janeiro, Oct. 10, 1933.
Ratifications deposited:
Brazil. Aug. 26, 1936. *T. I. B.*, Sept. 1936, p. 5.
Uruguay. *T. I. B.*, Aug. 1936, p. 6.

ASYLUM CONVENTION. Havana, Feb. 20, 1928.
Ratifications deposited:
Colombia. *T. I. B.*, Aug. 1936, p. 7.
Ecuador. Sept. 4, 1936. *T. I. B.*, Sept. 1936, p. 6.

AUTOMOTIVE TRAFFIC. Washington, Oct. 6, 1930.
Ratification: Ecuador. *T. I. B.*, Oct. 1936, p. 20.

BANKRUPTCY. Copenhagen, Nov. 7, 1933.
Signatures: Denmark, Finland, Iceland, Norway, Sweden.
(Ratified by all and in force since Jan. 1, 1935.)
Journal of Comp. Law, Nov. 1936, p. 262.

BILLS OF EXCHANGE AND PROMISSORY NOTES. Conflict of Laws. Convention and Protocol. Geneva, June 7, 1930.
Accession: Surinam. *L. N. O. J.*, Aug./Sept. 1936; *T. I. B.*, Sept. 1936, p. 15.

BILLS OF EXCHANGE AND PROMISSORY NOTES. Convention and Protocol. Geneva, June 7, 1930.
Accession (with reservation): *Surinam.* Aug. 7, 1936. *L. N. O. J.*, Aug./Sept. 1936; *T. I. B.*, Sept. 1936, p. 15.

BILLS OF EXCHANGE AND PROMISSORY NOTES. Stamp Laws. Geneva, June 7, 1930.
Accessions:
Irish Free State. *T. I. B.*, Oct. 1936, p. 16; *L. N. O. J.*, Aug./Sept. 1936.
Surinam.
British Territories (25). *L. N. O. J.*, Aug./Sept. 1936; *T. I. B.*, Sept. 1936, p. 15.

BROADCASTING. Convention and Final Act. Geneva, Sept. 23, 1936.
Signatures: (18 countries).
Text of convention and final act: *L. N. Doc.* C.399.M.252.1936.XII, and C.399.(a).-M.252(a).1936.XII.

CHECKS. Conflict of Laws on Checks. Geneva, Mar. 19, 1931.
Accession: Surinam. Aug. 7, 1936. *L. N. O. J.*, Aug./Sept. 1936; *T. I. B.*, Sept. 1936, p. 15.

CHECKS. Convention and Protocol. Geneva, Mar. 19, 1931.
Accession (with reservation): Surinam. Aug. 7, 1936. *L. N. O. J.*, Aug./Sept. 1936; *T. I. B.*, Sept. 1936, p. 15.

CHECKS. Stamp Laws. Geneva, March 19, 1931.
Accessions:
Irish Free State. July 10, 1936. *L. N. O. J.*, Aug./Sept. 1936.
Surinam. Aug. 7, 1936.
British Territories (26). July 18, 1936. *L. N. O. J.*, Aug./Sept. 1936; *T. I. B.*, Sept. 1936, p. 14.

CIVIL WAR. Havana, Feb. 20, 1928.
Ratification deposited: Ecuador. Sept. 4, 1936. *T. I. B.*, Sept. 1936, p. 4.

COMMERCIAL AVIATION. Havana, Feb. 20, 1928.
Ratification deposited: Ecuador. Aug. 15, 1936. *T. I. B.*, Sept. 1936, p. 11.

CONSULAR AGENTS. Havana, Feb. 20, 1928.
Ratification deposited: Ecuador. Sept. 4, 1936. *T. I. B.*, Sept. 1936, p. 19.

CONTAGIOUS DISEASES OF ANIMALS. Geneva, Feb. 20, 1935.
Ratification deposited: Bulgaria. Aug. 28, 1936. *T. I. B.*, Sept. 1936, p. 8.

COPYRIGHT CONVENTION. Havana, Feb. 20, 1928.
Ratification deposited: Ecuador. Aug. 15, 1936. *T. I. B.*, Sept. 1936, p. 12.

COUNTERFEITING CURRENCY AND PROTOCOL. Geneva, Apr. 20, 1929.
Adhesion deposited: Finland. Sept. 25, 1936. *T. I. B.*, Oct. 1936, p. 16.

DIPLOMATIC OFFICERS. Havana, Feb. 20, 1928.
Ratification deposited: Ecuador. Sept. 4, 1936. *T. I. B.*, Sept. 1936, p. 19.

EXTRADITION. Montevideo, Dec. 26, 1933.
Ratifications deposited:
Colombia and Guatemala. *T. I. B.*, Aug. 1936, p. 8.
Ecuador. June 19, 1936. *T. I. B.*, Sept. 1936, p. 7.

FAUNA AND FLORA PROTECTION. London, Nov. 8, 1933.
Text and signatures: *G. B. Treaty Series*, No. 27 (1936).
Ratification: Great Britain and South Africa. April 9 and Nov. 19, 1935. *G. B. Treaty Series*, No. 27 (1936).

HEALTH INSURANCE FOR AGRICULTURAL WORKERS. Geneva, June 16, 1927.
Ratification: Great Britain. *T. I. B.*, Aug. 1936, p. 14.

HEALTH INSURANCE FOR WORKERS IN INDUSTRY AND COMMERCE AND HOUSEHOLD EMPLOYMENT. Geneva, June 15, 1927.
Ratification: Great Britain. *T. I. B.*, Aug. 1936, p. 12.

HISTORY TEACHING. Montevideo, Dec. 26, 1933.
Ratification: Ecuador. June 19, 1936. *T. I. B.*, Sept. 1936, p. 6.

HOURS OF WORK (Glass-Bottle Works). Geneva, June 4, 1935.
Ratification: Norway. *T. I. B.*, Aug. 1936, p. 14; *L. N. O. J.*, Aug./Sept. 1936.

IMMUNITY OF GOVERNMENT VESSELS. Brussels, Apr. 10, 1926. Protocol, May 24, 1934.
Ratifications deposited:
Belgium, Brazil, Chile, Estonia, Hungary, Poland. Jan. 8, 1936 (effective Jan. 8, 1937).
Germany. June 27, 1936.
Netherlands (Including Netherland Indies, Surinam, and Curacao). July 8, 1936 (effective Jan. 8, 1937). *T. I. B.*, Sept. 1936, p. 18.

INTER-AMERICAN CONCILIATION. Washington, Jan. 5, 1929. Additional protocol, Montevideo, Dec. 26, 1933.
Ratification deposited: Dominican Republic. Sept. 10, 1936. *T. I. B.*, Oct. 1936, p. 2.

INVALIDITY INSURANCE IN AGRICULTURE. Geneva, June 29, 1933.
Ratification: Great Britain and Northern Ireland. July 18, 1936. *L. N. O. J.*, Aug./Sept. 1936.

INVALIDITY INSURANCE IN INDUSTRY, COMMERCE, LIBERAL PROFESSIONS AND FOR OUTWORKERS AND DOMESTIC SERVANTS. Geneva, June 29, 1933.
Ratification: Great Britain and Northern Ireland. July 18, 1936. *L. N. O. J.*, Aug./Sept. 1936.

JURIDICAL PERSONALITY OF FOREIGN COMPANIES. Declaration opened to signature of states members of Pan American Union. Text: *T. I. B.*, Aug. 1936, pp. 13 and 20.
Adhesion: Peru. Sept. 17, 1936. *T. I. B.*, Oct. 17, 1936, p. 15.

LIGHTSHIPS. Lisbon, Oct. 23, 1930.
Adhesion deposited: Turkey. *T. I. B.*, Aug. 1936, p. 16; *L. N. O. J.*, Aug./Sept. 1936.
Ratification deposited: Estonia. *T. I. B.*, Oct. 1936, p. 18.

LOAD LINE CONVENTION. London, July 5, 1930.
Adhesions:
Egypt (effective Oct. 24, 1936). *T. I. B.*, Sept. 1936, p. 18.
Panama. *T. I. B.*, Aug. 1936, p. 15.

MARITIME BUOYAGE. Geneva, May 13, 1936.
Opened for signature. Text: *L. N. Doc.* C.261.M.154.1936.VIII.

MARITIME CONVENTIONS: (1) Collisions, (2) Salvage at Sea. Brussels, Sept. 23, 1910.
Adhesion: U.S.S.R. *T. I. B.*, Aug. 1936, p. 16.

MARITIME NEUTRALITY. Havana, Feb. 20, 1928.
Ratification deposited: Ecuador. Sept. 4, 1936. *T. I. B.*, Sept. 1936, p. 4.

MARITIME SIGNALS. LISBON, Oct. 23, 1930.
Adhesion deposited: Turkey. *T. I. B.*, Aug. 1936, p. 16; *L. N. O. J.*, Aug./Sept. 1936.

NARCOTICS. Geneva, July 13, 1931.
Application to: Liechtenstein. *L. N. O. J.*, Aug./Sept. 1936.
Ratification: Sa'udi Arabia. Aug. 15, 1936. *L. N. O. J.*, Aug./Sept. 1936; *T. I. B.*, Sept. 1936, p. 9.

NATIONALITY. Montevideo, Dec. 26, 1933.
Ratification: Ecuador. June 24, 1936. *T. I. B.*, Sept. 1936, p. 8.

NATIONALITY OF WOMEN CONVENTION. Montevideo, Dec. 26, 1933.
Ratifications deposited:
Colombia and Guatemala. *T. I. B.*, Aug. 1936, pp. 9–10.
Ecuador. June 24, 1936. *T. I. B.*, Sept. 1936, p. 8.

NIGHT WORK OF WOMEN. Washington, Nov. 28, 1919.
Denunciation: Greece. June 30, 1936. *T. I. B.*, Sept. 1936, p. 17.

NIGHT WORK OF WOMEN. Washington, Nov. 28, 1919. Revision, 1934.
Ratifications:
Brazil. June 8, 1936.
Switzerland. June 4, 1936. *L. N. O. J.*, Aug./Sept. 1936.
Greece. May 30, 1936. *T. I. B.*, Sept. 1936, p. 17.

OLD AGE INSURANCE IN AGRICULTURE. Geneva, June 29, 1933.
Ratifications: Great Britain and Northern Ireland. *T. I. B.*, Aug. 1936, p. 14; *L. N. O. J.*, Aug./Sept. 1936.

OLD AGE INSURANCE IN INDUSTRY AND COMMERCIAL UNDERTAKINGS AND FOR OUTWORKERS AND DOMESTIC SERVANTS. Geneva, June 29, 1933.
Ratifications: Great Britain and Northern Ireland. *T. I. B.*, Aug. 1936, p. 14; *L. N. O. J.*, Aug./Sept. 1936.

OPIUM AGREEMENT. Protocol and Final Act. Geneva, Feb. 11, 1925.
Adhesion: Liechtenstein. *L. N. O. J.*, Aug./Sept. 1936.

PAN AMERICAN COMMERCIAL COMMITTEES. Buenos Aires, June 19, 1935.
Adhesion deposited: Dominican Republic. *T. I. B.*, Aug. 1936, p. 12.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Optional Clause. Geneva, Dec. 16, 1920.
Renewals:
Bolivia. July 7, 1936. *T. I. B.*, Aug. 1936, p. 2.
Netherlands. Aug. 5, 1936. *L. N. O. J.*, Aug./Sept. 1936.
Switzerland. Sept. 23, 1936. *L. N. M. S.*, Sept. 1, 1936, p. 282.

POSTAL CONVENTIONS. Cairo, March 20, 1934.
Ratification: Dominican Republic. *T. I. B.*, Oct. 1936, p. 19.
Ratification deposited: Estonia. *T. I. B.*, Aug. 1936, p. 17.

PRISONERS OF WAR. Geneva, July 27, 1929.
Ratification deposited: Hungary. *T. I. B.*, Oct. 1936, p. 9.

PROTECTION OF MOVABLE PROPERTY OF HISTORIC VALUE. Washington, April 15, 1935.
Ratification deposited: Guatemala. *T. I. B.*, Aug. 1936, p. 19.

RADIOTELEGRAPH CONVENTION AND REGULATIONS. Washington, Nov. 25, 1927.
Ratification: Liberia. *T. I. B.*, Aug. 1936, p. 18.

RIGHTS AND DUTIES OF STATES. Montevideo, Dec. 26, 1933.
Ratification: Ecuador. *T. I. B.*, Oct. 1936, p. 7.
Ratification deposited: Colombia. *T. I. B.*, Aug. 1936, p. 5.

ROAD SIGNALS. Geneva, Mar. 30, 1931.
Accession: Austria. Aug. 21, 1936. *L. N. O. J.*, Aug./Sept. 1936.

ROERICH PACT. Washington, Apr. 15, 1935.
Ratifications deposited:
Brazil. *T. I. B.*, Aug. 1936, p. 19.
Chile. Sept. 8, 1936.
Guatemala. Sept. 16, 1936. *T. I. B.*, Sept. 1936, pp. 19, 20.

SAFETY AT SEA. London, May 31, 1929.
Adhesions:
Egypt. July 24, 1936. *T. I. B.*, Sept. 1936, p. 9.
Panama. *T. I. B.*, Aug. 1936, p. 10.
Proclamation: United States. Sept. 30, 1936. *Press Releases.* Oct. 3, 1936, p. 288.
Ratification deposited: United States (with reservations), Aug. 7, 1936. *T. I. B.*, Aug. 1936, p. 10.

STATISTICS OF CAUSES OF DEATH. London, June 19, 1934.
Adhesions:
Egypt (applicable to certain areas). July 21, 1936.
Netherlands East Indies, Surinam and Curaçao (with reservation), July 27, 1936. *T. I. B.*, Sept. 1936, pp. 7, 8.

STRAITS CONVENTION. Montreux, July 20, 1936.
Ratifications were exchanged in Paris on Nov. 9, 1936, by representatives of eight countries (France, Great Britain, U. S. S. R., Bulgaria, Greece, Rumania, Yugoslavia and Turkey). *N. Y. Times,* Nov. 10, 1936, p. 17; *Times* (London), Nov. 10, 1936, p. 15; *B. I. N.*, Nov. 21, 1936, p. 435.

SUBMARINE WARFARE. Protocol. London, Nov. 6, 1936.
Signatures and text: Great Britain, France, United States, Italy, Japan, Australia, Canada, India, New Zealand, South Africa, and Irish Free State. *Times* (London), Nov. 7, 1936, pp. 11–12; *N. Y. Times,* Nov. 7, 1936, p. 6. *Cmd.* 5302.

TRADE-MARK AND COMMERCIAL PROTECTION CONVENTION. Washington, Feb. 20, 1929.
Ratification deposited: Colombia. *T. I. B.*, Aug. 1936, p. 13.

TREATIES AMONG AMERICAN STATES. Havana, Feb. 20, 1928.
Ratification deposited: Ecuador. Sept. 4, 1936. *T. I. B.*, Sept. 1936, p. 4.

UNDERGROUND WORK (Women) CONVENTION. Geneva, June 4, 1935.
Ratifications:
Great Britain and Sweden. *T. I. B.*, Aug. 1936, p. 14; *L. N. O. J.*, Aug./Sept. 1936.
Northern Ireland, Irish Free State. *L. N. O. J.*, Aug./Sept. 1936; *T. I. B.*, Sept. 1936, p. 17.

UNEMPLOYMENT INDEMNITY IN CASE OF LOSS OF SHIP. Genoa, July 9, 1920.
Ratification: Norway. *T. I. B.*, Aug. 1936, p. 14; *L. N. O. J.*, Aug./Sept. 1936.

WHITE SLAVE TRADE. Geneva, Sept. 30, 1921.
Adhesion: Australia (on behalf of Papua and Norfolk Island, New Guinea and Nauru). *T. I. B.*, Oct. 1936, p. 12.

WHITE SLAVE TRADE (Women of Full Age). Geneva, Oct. 11, 1933.
Ratifications deposited:
Austria. Aug. 7, 1936. *T. I. B.*, Sept. 1936, p. 9.
Australia (including Papua and Norfolk Island, New Guinea and Nauru), Sept. 2, 1936. *T. I. B.*, Oct. 1936, p. 12.

WIDOWS AND ORPHANS INSURANCE FOR WORKERS IN INDUSTRY, COMMERCE, AND LIBERAL PROFESSIONS, AND FOR OUTWORKERS AND DOMESTIC SERVANTS. Geneva, June 30, 1933.
Ratifications: Great Britain and Northern Ireland. *T. I. B.*, Aug. 1936, p. 14; *L. N. O. J.*, Aug./Sept. 1936.

WIDOWS AND ORPHANS INSURANCE IN AGRICULTURE. Geneva, June 30, 1933.
Ratifications: Great Britain and Northern Ireland. *T. I. B.*, Aug. 1936, p. 14; *L. N. O. J.*, Aug./Sept. 1936.

WORKMEN'S COMPENSATION FOR ACCIDENTS. Geneva, June 10, 1925.
Ratification: Austria. *T. I. B.*, Sept. 1936, p. 17.

WORKMEN'S COMPENSATION FOR ACCIDENTS (Equality of Treatment). Geneva, June 5, 1925.
Ratification: Greece. May 30, 1936. *L. N. O. J.*, Aug./Sept. 1936.

M. ALICE MATTHEWS

SUPREME COURT OF THE UNITED STATES

VALENTINE, *et al. v.* UNITED STATES *ex rel.* NEIDECKER *

Decided November 9, 1936

Under the Extradition Treaty of 1909 between the United States and France, which provides that "Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention" (Art. V), the President of the United States is without power to surrender citizens of the United States.

The question is not one of policy, but of legal authority, and the national government has not conferred the power to extradite upon the Executive in the absence of treaty or legislative provision.

The Act of Congress does not attempt to confer power upon the Executive to surrender any person, much less a citizen of the United States, to a foreign government where an extradition treaty does not provide for such surrender.

Historical background and administrative practice furnish no warrant for reading into the treaty a grant of power to surrender a citizen of the United States in the discretion of the Executive which the parties failed to insert.

Mr. Chief Justice HUGHES delivered the opinion of the Court.

Respondents sued out writs of *habeas corpus* to prevent their extradition to France under the treaty of 1909. 37 Stat. 1526. They are native-born citizens of the United States and are charged with the commission of crimes in France which are among the extraditable offences specified in the treaty. Having fled to the United States, they were arrested in New York City, on the request of the French authorities, under a preliminary warrant issued by a United States Commissioner and were held for extradition proceedings. By the writs of *habeas corpus* the jurisdiction of the Commissioner was challenged upon the ground that because the treaty excepted citizens of the United States, the President had no constitutional authority to surrender the respondents to the French Republic.

The controlling provisions of the treaty are as follows:

> Article I. The Government of the United States and the Government of France mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes or offences specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offence had been there committed.
>
> . . . . .
>
> Article V. Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

*299 U. S. 5.

The Circuit Court of Appeals, reversing the orders of the District Judge, sustained the contention of the respondents and directed their discharge. 81 F. (2d) 32. This court granted certiorari. 298 U. S. 647.

First. The question is not one of policy, but of legal authority. The United States has favored the extradition of nationals of the asylum state and has sought—frequently without success—to negotiate treaties of extradition including them.[1] Several of our treaties have made no exception of nationals.[2] This is true of the treaties with Great Britain from the beginning, of the treaty with France of 1843, and of that with Italy of 1868. Charlton *v.* Kelly, 229 U. S. 447, 467. Where treaties have provided for the extradition of persons without exception, the United States has always construed its obligation as embracing its citizens. *Id.*, p. 468. In the opinion in Charlton *v.* Kelly we alluded to the fact that it had "come to be the practice with a preponderant number of nations to refuse to deliver its citizens" and it was observed that this exception was of modern origin. The beginning of the exemption was traced to the practice between France and the Low Countries in the eighteenth century. And we found that owing "to the existence in the municipal law of many nations of provisions prohibiting the extradition of citizens, the United States has in several of its extradition treaties clauses exempting citizens from their obligation." Accordingly we divided the treaties in force into two classes, "those which expressly exempt citizens and those which do not." *Id.*, pp. 466, 467.

The effect of the exception of citizens in the treaty with France of 1909—now under consideration—must be determined in the light of the principles which inhere in our constitutional system. The desirability—frequently asserted by the representatives of our Government and demonstrated by their arguments and the discussions of jurists—of providing for the extradition of nationals of the asylum state is not a substitute for constitutional authority. The surrender of its citizens by the Government of the United States must find its sanction in our law.

It cannot be doubted that the power to provide for extradition is a national power; it pertains to the national government and not to the States. United States *v.* Rauscher, 119 U. S. 407, 412–414. But, albeit a national power, it is not confided to the Executive in the absence of treaty or legislative provision. At the very beginning, Mr. Jefferson, as Secretary of State, advised the President: "The laws of the United States, like those of England, receive every fugitive, and no authority has been given to their Executives to deliver

[1] Moore, Int. Law Dig., Vol. IV, sec. 594; Moore on Extradition, Vol. I, pp. 159–162.

[2] Great Britain, 1794, Art. XXVII, 1 Malloy, Treaties, p. 605; 1842, Art. X, *id.*, p. 655; 1889, *id.*, p. 740; 1931, 47 Stat. 2122; France, 1843, 1 Malloy, p. 526; Italy, 1868, *id.*, p. 966. See, also, Switzerland, 1850, Art. XIII, 2 Malloy, p. 1767; Venezuela, 1860, Art. XXVII, 2 Malloy, p. 1854; Dominican Republic, 1867, Art. XXVII, 1 Malloy, p. 413; Nicaragua, 1870, 2 Malloy, p. 1287; Orange Free State, 1871, Article VIII, 2 Malloy, p. 1312; Ecuador, 1872, 1 Malloy, p. 436.

them up." [3] As stated by John Bassett Moore in his treatise on Extradition —summarizing the precedents—"the general opinion has been, and practice has been in accordance with it, that in the absence of a conventional or legislative provision, there is no authority vested in any department of the government to seize a fugitive criminal and surrender him to a foreign power." [4] Counsel for the petitioners do not challenge the soundness of this general opinion and practice. It rests upon the fundamental consideration that the Constitution creates no executive prerogative to dispose of the liberty of the individual. Proceedings against him must be authorized by law. There is no executive discretion to surrender him to a foreign government, unless that discretion is granted by law. It necessarily follows that as the legal authority does not exist save as it is given by act of Congress or by the terms of a treaty, it is not enough that statute or treaty does not deny the power to surrender. It must be found that statute or treaty confers the power.

Second. Whatever may be the power of the Congress to provide for extradition independent of treaty, that power has not been exercised save in relation to a foreign country or territory "occupied by or under the control of the United States." Act of June 6, 1900, c. 793, 31 Stat. 656. 18 U. S. C. 652. See Neely *v.* Henkel, 180 U. S. 109, 122. Aside from that limited provision, the Act of Congress relating to extradition simply defines the procedure to carry out an existing extradition treaty or convention.[5]

The provision is that—"*Whenever there is a treaty or convention for extradition* between the Government of the United States and any foreign government"—a proceeding may be instituted to procure the surrender of a person charged with the commission of a crime specified in the treaty or convention. Upon the apprehension of the accused, he is entitled to a hearing and, upon evidence deemed to be sufficient to sustain the charge "under the provisions of the proper treaty or convention," the charge with the evidence is to be certified to the Secretary of State to the end that a warrant may issue upon the requisition of the proper authorities of such foreign government, "*for the surrender of such person, according to the stipulations of the treaty or convention.*" R. S. 5270; 18 U. S. C. 651.

It is manifest that the Act does not attempt to confer power upon the Executive to surrender any person, much less a citizen of the United States, to a foreign government where an extradition treaty or convention does not provide for such surrender. The question then, is the narrow one whether the power to surrender the respondents in this instance is conferred by the treaty itself.

Third. It is a familiar rule that the obligations of treaties should be liberally construed so as to give effect to the apparent intention of the parties. Tucker *v.* Alexandroff, 183 U. S. 424, 437; Jordan *v.* Tashiro, 278 U. S. 123, 127; Factor *v.* Laubenheimer, 290 U. S. 276, 293, 294. But, in

[3] Quoted in Moore on Extradition, Vol. I, pp. 22, 23; Moore, Int. Law Dig., Vol. IV, p. 246.
[4] Moore on Extradition, Vol. I, p. 21. [5] Moore on Extradition, Vol. I, p. 50.

this instance, there is no question for construction so far as the obligations of the treaty are concerned. The treaty is explicit in the denial of any obligation to surrender citizens of the asylum state—"Neither of the contracting parties shall be bound to deliver up its own citizens."

Does the treaty, while denying an obligation in such case, contain a grant of power to surrender a citizen of the United States in the discretion of the Executive? The Constitution declares a treaty to be the law of the land. It is consequently, as Chief Justice Marshall said in Foster *v.* Nielson, 2 Pet. 253, 314, "to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision." See, also, Head Money Cases, 112 U. S. 580, 598; United States *v.* Rauscher, *supra*, p. 418. Examining the treaty in that aspect, it is our duty to interpret it according to its terms. These must be fairly construed, but we cannot add to or detract from them.

Obviously the treaty contains no express grant of the power now invoked. Petitioners point to Article I which states that the two governments "mutually agree to deliver up persons" who are charged with any of the specified offences. Petitioners urge that the word "persons" includes citizens of the asylum state as well as all others. But Article I is the agreement to deliver. It imposes the obligation of that agreement. Article I does not purport to grant any power to surrender save as the power is related to and derived from that obligation. The word "persons" in Article I describes those who fall within the agreement and with respect to whom the obligation is assumed. As Article V provides that there shall be no obligation on the part of either party to deliver up its own citizens, the latter are necessarily excepted from the agreement in Article I and from the "persons" there described. The fact that the exception is contained in a separate article does not alter its effect. That effect is precisely the same as though Article I had read that the two governments "mutually agree to deliver up persons except its own citizens or subjects."

May a grant to the Executive of discretionary power to surrender citizens of the United States be implied? Petitioners seek to find ground for this implication by comparing the expression in Article V "Neither of the contracting parties shall be bound," in relation to the surrender of citizens, with the phrase in Article VI that "A fugitive criminal shall not be surrendered" if the offence charged is of a political character, and the clause in Article VIII that extradition "shall not be granted" where prosecution is barred by limitation according to the laws of the asylum country. This difference in the phrasing of denials of obligation would be at the best an extremely tenuous basis for implying a power which in order to exist must be affirmatively granted. Of far greater significance is the fact that a familiar clause—found in several of our treaties—which qualifies the exception of citizens by expressly conferring discretionary power to surrender them was omitted in the treaty with France.

The treaty with Japan of 1886 provided in Article VII [6]—

> Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention, but they shall have the power to deliver them up if in their discretion it be deemed proper to do so.

A similar provision is found in the extradition treaties with the Argentine Republic, of 1896, and with the Orange Free State, of 1896.[7] The treaties with Mexico, of 1899, with Guatemala, of 1903, with Nicaragua, of 1905, and with Uruguay, of 1905, expressly lodge the discretionary power with the "executive authority." Thus in the treaty with Mexico of 1899 we find the following article (Art. IV):

> Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this convention, but the executive authority of each shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so.[8]

We must assume that the representatives of the United States had these clauses before them when they negotiated the treaty with France and that the omission was deliberate. And the fact that our Government had favored extradition treaties without excepting citizens puts the omission of the qualifying grant of discretionary power in a strong light.

Historical background and administrative practice furnish no warrant for reading into the treaty with France a grant which the parties failed to insert. History and practice not only do not support, but they rather negative, the claim of an implied discretionary power. The language of Article V of the treaty with France first appears in our extradition treaty with Prussia in 1852,[9] and it was repeated in a number of later treaties including the Mexican treaty of 1861.[10] It seems that the question as to the effect of the provision first arose under the last-mentioned treaty. Mr. Moore reviews the cases.[11] In 1871 the United States requested the surrender of fugitives who had

[6] 1 Malloy, 1027. Quoted in Charlton *v.* Kelly, 229 U. S. 447, 467.

[7] The provision of the treaty with the Argentine Republic, 1896, Art. 3, 1 Malloy, 26, is as follows:

"In no case shall the nationality of the person accused be an impediment to his extradition, under the conditions stipulated by the present treaty, but neither Government shall be bound to deliver its own citizens for extradition under this convention; but either shall have the power to deliver them up, if in its discretion it be deemed proper to do so."

The same phraseology is used in the treaty with the Orange Free State, 1896, Art. V, 2 Malloy, 1316.

[8] 1 Malloy, 1186. The treaties with Guatemala, 1903, Art. V, 1 Malloy, 881, and with Nicaragua, 1905, 2 Malloy, 1295, have the same provision.

The treaty with Uruguay, 1905, Art. X, 2 Malloy, 1828, provides: "The obligation to grant extradition shall not in any case extend to the citizens of the two parties, but the executive authority of each shall have power to deliver them up, if, in its discretion, it is deemed proper to do so."

[9] 2 Malloy, 1503.

[10] 1 Malloy, 1127.

[11] Moore on Extradition, Vol. I, pp. 164–167; Moore, Int. Law Dig., Vol. IV, pp. 301–303.

escaped to Mexico. It appeared that they were Mexican citizens. The Mexican Government refused surrender, stating that its action "should be in strict conformity with the stipulations of the treaty of extradition" and with "the practice observed" by the Government of the United States toward the Mexican Government "in similar cases." In 1874, one Perez, a Mexican, committed a murder in Texas and escaped to Mexico. Our Secretary of State, Mr. Fish, instructed the American Ambassador that although the surrender could not be demanded as of right and would not be asked as a favor, or even accepted with an understanding that it would be reciprocated, the circumstances might be made known to the Mexican Government with a view to ascertain whether it would voluntarily surrender the fugitive. The Mexican Government declined the surrender. In another case, arising in 1877, the question of the power of the Mexican Government to surrender its citizens to the United States came before its Federal Supreme Court. While it appeared that the fact of Mexican citizenship was not conclusively established, the court was of the view that the individual guarantees of the Mexican Constitution would not be violated by the surrender.

The question was elaborately considered in the case of Trimble in 1884. He was an American citizen whose extradition was demanded by the Mexican Government. Our Government refused surrender. Mr. Frelinghuysen, Secretary of State, took the ground that as the treaty negatived the obligation to surrender, the President was not invested with legal authority to act. While it is true that Secretary Frelinghuysen later concluded that the question was of such importance that it should receive judicial determination, the view he entertained as to the President's lack of power was cogently stated.[12]

[12] Mr. Frelinghuysen's views appear in a report to the Senate. Sen. Ex. Doc. 98, 48th Cong., 1st sess. See Moore on Extradition, Vol. I, pp. 167, 168. Discussing the constitutional powers of the President, Mr. Frelinghuysen concluded:

"Thus it appears that, by the opinions of several Attorneys-General, by the decisions of our courts, and by the rulings of the Department of State, the President has not, independent of treaty provision, the power of extraditing an American citizen; and the only question to be considered is whether the treaty with Mexico confers that power.

"By the treaty with Mexico proclaimed June 20, 1862, this country places itself under obligations to Mexico to surrender to justice persons accused of enumerated crimes committed within the jurisdiction of Mexico who shall be found within the territory of the United States; and further provides that that obligation shall not extend to the surrender of American citizens. The treaty confers upon the President no affirmative power to surrender an American citizen. The treaty between the United States and Mexico creates an obligation on the part of the respective governments, and does no more, and where the obligation ceases the power falls. It is true that treaties are the laws of the land, but a statute and a treaty are subject to different modes of construction. If a statute by the first section should say, The President of the United States shall surrender to any friendly power any person who has committed a crime against the laws of that power, but shall not be bound so to surrender American citizens, it might be argued, perhaps correctly, that the President had a discretion whether he would or would not surrender an American citizen. But a treaty is a contract, and must be so construed. It confers upon the President only the power to perform that contract. I understand the treaty with Mexico as reading thus: The President shall be

Referring to that view, Mr. Moore adds: "To this position the Government of the United States has adhered." [13]

Secretary Bayard in the case of Hudson, in 1888, followed the ruling in the Trimble case. He said: "The treaty provision referred to, which is found similarly stated in many of our extradition treaties, was held to negative any obligation to surrender, and thus to leave the authorities of this government without authority to act in such a case. After due consideration, the department is of opinion that the construction given to the treaty in the *Trimble Case* is correct." See *Ex parte* McCabe, 4 Fed. 363, 379. Secretary Blaine, in 1891, in refusing to ask for the surrender of Mexican citizens, took the same position, saying: "In view of this" (the Trimble case), "and several prior and subsequent cases in which a similar construction has been given to the treaty, the government is precluded from demanding the extradition of the fugitives in the present instance." *Id.*

In this situation, the question of the construction of the treaty with Mexico came before the District Court of the United States for the Western District of Texas in 1891. Mrs. McCabe, an American citizen who was held for extradition proceedings on the charge that she had committed the crime of murder in Mexico, sued out a writ of *habeas corpus*. In an elaborate opinion reviewing the precedents, Judge Maxey ruled that there was no authority to surrender and directed her discharge from custody. *Ex parte* McCabe, *supra*. The case was not appealed.

In the light of this concurrence of administrative and judicial views a new extradition treaty with Mexico was negotiated (1899). That treaty, as we have seen, repeated the exception with respect to citizens but, following the precedent of the treaties with Japan, the Argentine Republic and the Orange Free State,[14] added the qualifying words "but the executive authority of each shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so." And the same qualification was inserted in the later treaties above mentioned.[15]

Petitioners insist that the precedents fall short of showing a uniform course of practical construction favorable to the respondents. The argument is unavailing. What is more to the point is that administrative practice is not shown to be favorable to the petitioners. Strictly the question is not whether there had been a uniform practical construction denying the power, but whether the power had been so clearly recognized that the grant

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bound to surrender any person guilty of crime, unless such person is a citizen of the United States.

"Such being the construction of the treaty, and believing that the time to prevent a violation of the law of extradition was before the citizens left the jurisdiction of the United States, I telegraphed the Governor of Texas that an American citizen could not legally be held under the treaty for extradition.

"It would be a great evil that those guilty of high crime, whether American citizens or not, should go unpunished; but even that result could not justify an usurpation of power."

[13] Moore on Extradition, Vol. I, p. 167. [14] See note 7. [15] See note 8.

should be implied. The administrative rulings to which we have referred make the latter conclusion wholly inadmissible.

The treaty with France of 1843 made no exception of citizens. France, however, refused to recognize an obligation under that treaty to surrender her citizens.[16] In inserting the exception in the new treaty, a clause was chosen under which Secretaries of State and a federal court had held that the President had no discretionary power to surrender citizens of this country. Notwithstanding this, that excepting clause was inserted without qualification, and a familiar clause granting a discretionary power was omitted. No provision was inserted to confer such a power. It was upon that basis that the treaty was negotiated and ratified. In these circumstances we know of no rule of construction which would permit us to supply the omission.

Against these considerations, the inference sought to be drawn from the French "exposé des motifs" accompanying the treaty, and more particularly from the "exposé" accompanying the Franco-British treaty of 1908, is of slight weight.[17]

Petitioners strongly rely upon the decision in England in *In re* Galwey [1896], 1 Q. B. D. 230; compare Reg. *v.* Wilson, 3 Q. B. D. 42 (1877). But, as the Circuit Court of Appeals points out, the Anglo-Belgian treaty there under consideration had its own history and background—quite different from that which we have here—upon which the case turned. It does not present a persuasive analogy.

Applying, as we must, our own law in determining the authority of the President, we are constrained to hold that his power, in the absence of statute conferring an independent power, must be found in the terms of the treaty and that, as the treaty with France fails to grant the necessary authority, the President is without power to surrender the respondents.

However regrettable such a lack of authority may be, the remedy lies with the Congress, or with the treaty-making power wherever the parties are willing to provide for the surrender of citizens, and not with the courts.

The decree of the Circuit Court of Appeals is affirmed.

Affirmed.

[16] Moore, Int. Law Dig., Vol. IV, p. 298.

[17] *Documents Parlementaires (1909), Chambre des Deputés, Annexe 2391; id., Sénat, Annexe 2338.*

GREAT BRITAIN: COURT OF APPEAL

(LORD WRIGHT, M.R., SLESSER AND ROMER, L.JJ.)

INTERNATIONAL TRUSTEE FOR PROTECTION OF BONDHOLDERS AKTIENGESELLSCHAFT *v.* THE KING*

November 2, 1936

Appeal from the judgment of the High Court of Justice as to the effect of a gold clause in certain bonds issued by the British Government in the United States in 1917 (52 Times L. R. 82; this JOURNAL, Vol. 30, 1936, p. 324). *Reversed.*

Held, (1) That the law of England applied to the contract.

(2) That the contract contained in the bond was not one to be performed by the payment of principal and interest in gold coin, the reference to gold being intended to fix a measure of value and not to define a mode of payment.

(3) That the bond, so construed, did not offend against the Joint Resolution of the United States Congress of 1933.

(4) That the suppliants were entitled to receive at the appropriate date, if the option to be paid in New York was exercised, such an amount in dollars as would be equivalent to the value in currency at that time of 1,000 gold dollars specified in the obligation; that if the option to be paid in London was exercised, the equivalent of $1,000 at the fixed rate of $4.86½ to the pound sterling; and that the same principles would apply *mutatis mutandis* with regard to the payments of interest.

Feist *v.* Société Intercommunale Belge d'Électricité [1934] A. C. 161; 50 Times L. R. 143; this JOURNAL, Vol. 28, 1934, 374, followed.

THE MASTER OF THE ROLLS: The judgment which I am about to read is the judgment of the court.

The appeal in this case is against a judgment of Mr. Justice Branson, who has decided against the suppliants, who are the holders of a bond for $1,000 issued by his Majesty's Government dated February 1, 1917, and styled "A 20-year 5½ per cent coupon gold bond payable February 1, 1937." The learned judge has held that the contract contained in the bond was to be deemed to be an English contract, though actually made in America; he has decided against the suppliants' petition on the ground that the contract was one to be performed in the United States by the payment of the principal and interest in gold coin. By the law of the United States as from the year 1933 such a payment was unlawful, and he has accordingly dismissed the petition on the ground that an English court will not enforce the performance of acts in a foreign country in which those acts are contrary to the law of that country. The appellants, while accepting the position that the contract is to be deemed to be an English contract, have contended that the obligations under the contract are not to pay in specie in gold, but that the reference to payment in gold coin is inserted as a measuring rod or measure of liability, and that there is nothing in the recent law of the United States which makes it unlawful to pay the full amount provided for by the terms of the bond.

It was agreed during the course of the proceedings before Mr. Justice Branson that the court should not occupy itself with the question of the technical form of the proceedings. Both parties asked the court to make a

* The Times Law Reports, Vol. 53, pp. 64–71.

declaration which would determine the rights of the parties. We therefore do not think it necessary to examine the original form of the petition or its subsequent amendment. The question before us is: What is the true meaning of the contract? The Attorney-General in the trial before Mr. Justice Branson said that he was not before the court on any technicality and invited the judge to give his view of the rights of a bondholder on presentation of the coupons, or the bonds, in New York, while the legislation of the United States of America remains as it is at present. We follow the course which he proposed. The bonds were issued in three denominations, $1,000, $500, and $100. So far as the principal sums are concerned, the provisions are identical, except with regard to amount, and the same is true with regard to the coupons. There is, however, a special point on the form of the coupon depending on the precise amounts of dollars and fractions of dollars which are payable. The bond, which is an engraved document having at the top a symbolic figure and on each side of the symbolic figure the sum of $1,000 (to take that amount) engraved in decorative form, is headed: "The Government of the United Kingdom of Great Britain and Ireland 20-year 5½ per cent coupon gold bond payable February 1, 1937." The operative part proceeds as follows:

The Government of the United Kingdom of Great Britain and Ireland (hereinafter termed "obligor") for value received promises to pay to bearer, or, if this bond be registered, then to the registered holder thereof, the sum of $1,000 on the 1st day of February, 1937, and to pay interest on such principal sum at the rate of five and one-half per cent (5½%) per annum, semi-annually, on the 1st day of August and the 1st day of February in each year, until such principal sum shall be paid, but only upon presentation, and surrender of the coupons for such interest hereto attached as severally they mature. Such principal sum and the interest thereon will be paid at the option of the holder, either in the City of New York, State of New York, United States of America, at the office or agency which will be maintained in the said city by the obligor for the service of the bonds of this issue in gold coin of the United States of America of the standard of weight and fineness existing on February 1, 1917, or in the City of London, England, in sterling money at the fixed rate of $4.86½ to the pound. Payment at either place aforesaid will be made without deduction from either such principal or interest for any British taxes, present or future. This bond will not be redeemed prior to the due date thereof above specified.

There follows a provision for the registration of the bond, as to the principal sum, and there are consequential provisions if the holder is registered. The back of the bond is headed with the name of the Government of the United Kingdom of Great Britain and Ireland and then appears the figure of $1,000 in a decorative setting. These words follow:

20-year 5½ per cent coupon gold bond payable February 1, 1937, interest payable February 1 and August 1. Principal and interest payable at the option of the holder in New York or London.

There were attached to the bond a series of coupons each for the appropriate amount of half-yearly interest at 5½ per cent per annum; for instance, in the case of a bond for $1,000 the coupon is for $27.50, which involves a fraction of a dollar. The coupon

promises to pay to bearer, at the office or agency which for such purpose will be maintained by the Government in the City of New York, United States of America, 27 and 50/100 dollars in gold coin of the United States of America, or, at the option of the holder, in London, England, in sterling money at the fixed rate of $4.86\frac{1}{2}$ to the pound, payment at either place being made without deduction for British taxes present or future, being six months' interest on the 20-year $5\frac{1}{2}$ per cent bond of the Government.

There was evidence that $1 gold pieces were only coined in small numbers for a short period many years ago, and there was no gold coinage of any amount at any time of less than $1.

The loan was duly subscribed, and by February 7, 1919, there remained outstanding 20-year bonds in the form which I have stated—of which the suppliants held one—amounting in all to $143,587,000 in the three denominations respectively which I have stated. It is not necessary to refer to the actual circumstances under which the loan was first advertised and then accepted. The loan was originally in one-year and two-year convertible gold notes. An advertisement had been issued and had declared that principal and interest were to be payable at the office of J. P. Morgan & Company, and that on notice the one-year or two-year notes were to be convertible into bonds such as those which I have described. The advertisement was signed by a number of banks and issuing houses in the United States, and the subscription books were to be opened at the office of J. P. Morgan & Company, and the amounts due on allotment were to be payable at the office of J. P. Morgan & Company in New York funds. In or about July, 1933, the larger proportion of the outstanding bonds were discharged under an arrangement proposed by the British Government and accepted by the bulk of the bondholders. At the time of the arrangement the Court of Appeal in England had held in Feist *v.* Société Intercommunale Belge d'Électricité (49 *The Times* L. R. 344; [1933] Chancery, 684), afterwards reversed by the House of Lords (50 *The Times* L. R. 143; [1934] A. C. 161), a judgment to which we refer later, that a contract providing that a debt should be discharged by a payment in gold coins could be discharged by payment in bank-notes for the nominal amount. It was not then admitted that that decision governed the construction of the words in question, but all the bondholders except those representing $15,000,000 accepted an arrangement under which they were to receive until the date of maturity interest at $2\frac{1}{2}$ per cent instead of $5\frac{1}{2}$ per cent per annum, and that instead of each bond of $1,000 then worth at par £206, they should receive a bond to the value of £260. The suppliants are bondholders who did not fall in with this arrangement, and the petition of right was eventually presented to determine what was the true construction of the bond.

The first question which has to be decided is what is the proper law of the bond. The loan was contracted in the United States; it was issued at the office of the New York bankers, Messrs. J. P. Morgan & Company. The money lent was lent in dollars, and, if the bonds were registered at all, they

were to be registered in New York and were to be transferable by registration there. According to what may be described as the principal option, namely, that principal and interest should be discharged in New York, its performance was to be in the United States of America. In these circumstances, on the principles generally applied in the law of contracts, it would naturally be held to be an obligation the intention of which was that it should be governed by the law of the United States or the law of New York. The learned judge, however, has rejected that conclusion, and we are in agreement with his decision that the proper law of this contract is the law of England. We base our conclusion—as did the learned judge—on the decision of Lord Romilly, M.R., in Smith *v.* Weguelin (L. R. 8 Eq. 198), in which he laid down the principle that where a Government enters into a contract of loan in a country foreign to itself, it must be held exceptionally to the general rule that the contract is to be governed by the law of the country of the Government, and not the law of the place where the contract was made or by the law which would generally be applied in a transaction between private persons. Lord Romilly said this (L. R. 8 Eq. at p. 212):

> It is, in my opinion, a complete misapprehension to suppose that, because a foreign Government negotiates a loan in a foreign country, it thereby introduces into that transaction all the peculiarities of the law of the country in which the negotiation is made. The place where the loan is negotiated does not, in my opinion, in the least degree affect the question of law. The contract is the same, and the obligations are the same, whoever may be the bondholders. Suppose a French or Belgian company residing in Paris or in Brussels instruct their agent in London to subscribe for some of these bonds, is the contract between the Peruvian Government and a French Company or between the Peruvian Government and a Belgian Company to be regulated by the English law because the contract is made by their agents in London, or are the contracts to vary according to the domicil of the subscriber to the loan? If the French Government should negotiate a loan on certain specified terms, whether negotiated in Brussels, in London, or in Paris, the same law must regulate the whole, and that law is the law of France, as much as if it had been expressly notified in the articles that the French law would be that by which the contract must be construed and governed. So, if the English Government were to negotiate a loan in Paris or in New York, the English law must be applied to construe and regulate the contract.

That statement of principle was approved by Lord Selborne in Goodwin *v.* Robarts (1 App. Cas., 476, at p. 495). It is true that the principle so laid down was not in either case essential to the decision of the matter, either before the Chancery Court or the House of Lords. It was also pointed out that Smith *v.* Weguelin (*supra*) is not cited as an authority for the particular proposition in the English works of authority on the conflict of laws, such as those by the late Professor Dicey or by the late Professor Westlake. It is, however, cited by Professor Beale in his *Conflict of Laws*. He states (Vol. II, at page 1,102) as part of the law of England on this point that "when a

foreign Government is a party to a contract the law of such Government is applied," and he quotes Smith *v.* Weguelin (*supra*). We agree with the learned judge that we ought to follow this authority and apply it in the present case. There are special features which exist in the case of a contract by a Government which may well make it the proper inference that contracts into which they enter are to be governed by the law of that Government. Any such contract can only be put in suit against the Government, if at all, in the courts of their own country, and though it is true that the Government may submit to the jurisdiction of a foreign court either by themselves bringing an action or by accepting service of proceedings in that foreign court and waiving their immunity, still, any such course is entirely at the discretion and the volition of the Government, and, that being so, the court is entitled to infer that the intention of the contract is that it should be governed by the law of the Government in question. As an analogy may be cited cases where the parties to a contract have agreed to submit possible disputes under it to a forum in a particular country. In such cases the inference of intention is that the law of that country shall govern the contract. See N. V. Kwik Hoo Tong Handel Maatschappij *v.* James Finlay and Co., Limited ([1927] A. C. 604, especially the observations of Lord Dunedin at page 608). Applying these principles to the present case, we agree with Mr. Justice Branson that the law of the bonds in question is the English law.

It is on the question of what is the true construction of the contract on the basis of English law that we find ourselves in disagreement with the learned judge. The question of the construction of what is called the "gold clause" in a contract involving payment of money, in particular under bonds and obligations such as those in question, has been the subject recently of a number of decisions. With regard to an English contract the governing decision must be that of the House of Lords in Feist *v.* Société Intercommunale Belge d'Électricité (*supra*). The same principles of construction have been applied by the Supreme Court of the United States in the case of Norman *v.* Baltimore & Ohio Railroad Company (294 U. S. 240)* and, as we think, in other cases before that court. It has also been applied in decisions of the Permanent Court of International Justice: in particular we may refer to the Serbian Loans case (Series A, Nos. 13–24, Collection of Judgments, 1927–1930; Judgment No. 14, p. 5).

The uniform effect of these judgments as we read and understand them is that the gold clause has not the effect of constituting the contract a bullion contract or even a money contract requiring payment in specie or in the specific gold coin mentioned. The reference to the gold dollar or the gold franc, or whatever the unit of account may be, is not intended to define a mode of payment, but to fix a measure of value. To quote the language of the Supreme Court of the United States in Norman *v.* Baltimore & Ohio Railroad Company (294 U. S. at p. 302):

* This JOURNAL, Vol. 30 (1936), p. 300.

> The gold clauses now before us were not contracts for the payment in gold coin as a commodity, or in bullion, but were contracts for the payment of money. The bonds were severally for the payment of one thousand dollars. We also think that, fairly construed, these clauses were intended to afford a definite standard or measure of value and thus to protect against a depreciation of the currency and against the discharge of the obligation by a payment of lesser value than that prescribed.

Or, as the Supreme Court said in Perry *v.* United States (294 U. S. 330,* at p. 348): "We think that the reasonable import of the promise is that it was intended to assure one who lent his money to the Government and took its bond that he would not suffer loss through depreciation in the medium of payment." But for an English court considering an English contract, the governing authority is the decision of the House of Lords in Feist's case (*supra*). The judgment of the House was given by Lord Russell of Killowen, with whom the other members concurred. In that case the terms which provided for the payment of the amount of the bond, £100, were contained in clause 1: "£100 in sterling in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on September 1, 1928." There was a similar provision as to the payment of the interest, and in clause 4 it was provided that the bond was to be "one of an authorised issue of bonds of the company of an aggregate principal amount not exceeding £500,000 in sterling in gold coin of the United Kingdom at any one time outstanding." The coupons which related to the interest at 5½ per cent payable half-yearly, contained a provision that the sum of £2 15s. was to be paid "in sterling in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on the 1st day of September, 1928." The bond in that case contained in each of the two top corners a symbol and the figure of £100 in an ornamental border.

Lord Russell of Killowen, in his judgment in that case, came to the conclusion (50 *The Times* L. R. at p. 146; [1934] A. C. at p. 171) that it was apparent from the contents of the document that the parties did not use the words of the gold clause in accordance with the literal meaning which they would bear if considered apart from the rest of the document and the circumstances which surrounded its execution, in particular because the interest could not be paid in gold coin of the United Kingdom. He also arrived at the same conclusion by pointing out that according to its strict reading the coins tendered would all have to be coins of the exact standard of weight and the exact standard of fineness specified in the Coinage Act, 1870, without any remedy, allowance, or variation from the standard. He went on to say (50 *The Times* L. R. at p. 146; [1934] A. C. at p. 172):

> I therefore ask myself this question. If the words of the gold clause cannot have been used by the parties in the sense which they literally bear, ought I to ignore them altogether and attribute no meaning to

* This JOURNAL, Vol. 30 (1936), p. 316.

> them, or ought I, if I can discover it from the document, to attribute some other meaning to them? Clearly the latter course should be adopted if possible, for the parties must have inserted these special words for some special purpose, and if that purpose can be discerned by legitimate means, effect should be given to it. In my opinion, the purpose can be discerned from clause 4, in which the reference to gold coin of the United Kingdom is clearly not a reference to the mode of payment but to the measure of the company's obligation. So, too, condition 6, which again is a clause not directed to mode of payment, but to describing and measuring liability, shows that the words are used as such a measure. In just the same way I think that in clauses 1 and 2 of the bond the parties are referring to gold coin of the United Kingdom of a specific standard of weight and fineness not as being the mode in which the company's indebtedness is to be discharged, but as being the means by which the amount of that indebtedness is to be measured and ascertained. I would construe clause 1 not as meaning that £100 is to be paid in a certain way, but as meaning that the obligation is to pay a sum which would represent the equivalent of £100 if paid in a particular way—in other words, I would construe the clause as though it ran thus (omitting immaterial words) "pay . . . in sterling a sum equal to the value of £100 if paid in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on the 1st day of September, 1928." I would similarly construe clause 2. I am conscious, my Lords, that this construction strains the words of the document, and that it fits awkwardly with some of its provisions. Thus, for instance, the half-yearly payments in accordance with the coupons (which are described in clause 2 as equal) may in fact not be equal. But I prefer this to the only other alternatives—namely, attributing no meaning at all to the gold clause, or attributing to it a meaning which from other parts of the document and the surrounding circumstances the parties cannot have intended it to bear.

His Lordship also quoted a passage from the decision of The Hague Court, which has been already mentioned, and the way in which he introduces the quotation is very significant. He says:

> I do not, I need hardly say, treat these as in any way binding upon us. Indeed the relevant facts and words under consideration were very different from those which have been under consideration here. I would like, however, to cite one passage as stating happily and succinctly the considerations and principles which have influenced me in arriving at the conclusion which I have reached. It occurs in the judgment dealing with certain Serbian loans stated to be payable both as to principal and interest in gold. It runs thus (Serbian Loans case (*supra*), Judgment No. 14, at p. 32): "As it is fundamental that the terms of a contract qualifying the promise are not to be rejected as superfluous, and as the definitive use of the word 'gold' cannot be ignored, the question is: What must be deemed to be the significance of that expression? It is conceded that it was the intention of the parties to guard against the fluctuations of the Serbian dinar, and that, in order to procure the loans, it was necessary to contract for repayment in foreign money. But, in so contracting, the parties were not content to use simply the word 'franc,' or to contract for payment in French francs, but stipulated for 'gold

> francs.' It is quite unreasonable to suppose that they were intent on providing for the giving in payment of mere gold specie, or gold coins, without reference to a standard of value. The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe, but to destroy it."

We particularly refer to this part of his Lordship's judgment because it illustrates a matter of very considerable importance. The gold clauses in bonds and obligations are very common in international contracts and in every part of the world. It would be a very serious matter if contracts of that character were treated by particular courts as having a different meaning in the absence of language and surrounding circumstances of a decisive character compelling that conclusion. The construction of such commercial clauses ought to be so far as possible uniform unless there are the strongest considerations involving a different construction.

The learned judge found in the present case that there were features which entitled him, or required him, to distinguish the bond in question from that before the House of Lords in the case which I have just cited. In particular, he relied on a difference in the circumstances surrounding the issue of the bond in Feist's case (*supra*) and those surrounding the issue of the bond now in question. He said (52 *The Times* L. R. 82, at p. 86):

> I am satisfied on the evidence that the gold clause was inserted in that limb of the provision as to payment which relates to payment in New York, not with any special reference to any possibility of the United States of America going off the gold standard, but as a customary clause in use in similar contracts in the United States of America for some 47 years, the practical operation of which was fully understood. There is no need to strain any of the language of the document, unless it be straining it first to imply a term that any small sum for the payment of which no gold coin was available should be discharged in silver or nickel coins of legal tender and to construe the expression "gold coin of the standard of weight and fineness existing on February 1, 1917," as intending gold coin which would pass as legal tender under the statutes enacting that standard. I conclude, therefore, that the obligation of this bond is to pay in the United States in gold coin of that country equal in weight and fineness to that which was legal tender in February, 1917, and where the sum is too small to be so paid, then in silver or nickel coins of legal tender there.

We are unable to concur in that view of the position. We cannot find any substantial distinction between the language of the bond in question and that which was being considered in Feist's case (*supra*). It is true that at the date of the loan—1917—the United States were on the gold standard and that the paper dollar was convertible into gold. The evidence of the American lawyers before the court was that for practicable purposes at that time no one drew any distinction between the paper dollar and the gold dollar, and that in practice even in contracts containing gold clauses, which were very common in long-term obligations, gold would not be tendered in payment.

After the Civil War there had been in America very serious depreciation of the currency, and there seems to be no doubt that the whole object of inserting the gold clauses originally had been to provide against the risk of any possible future depreciation in the currency. It was for that reason that such clauses were common in the United States. Such depreciation in the currency could well be provided for by a clause the effect of which would be that if the currency were depreciated below the value of the standard weight and fineness of the gold dollar as at the date at which the debt was contracted the obligation should be construed as an obligation to pay, when the time for payment came, such a number of the dollars then current as would be equivalent in gold value to the dollars stipulated in the gold clause. In that way the possible depreciation of the dollar would be provided for, and the lender would not be prejudiced by the devaluation in the currency. In other words, to apply that to the existing facts of this case at the present time the equivalent of $1,000—taking their value as it was in 1917 while the dollar was convertible into gold and before it was devalued as it was in 1933—is $1,690, and it is that amount to which the suppliants contend they are entitled, as matters now stand, in discharge of the obligation to pay $1,000 in gold coin of the United States of the standard of weight and fineness existing at February, 1917. The obligation thus becomes an obligation of an amount which can only be fixed from time to time by ascertaining the gold value of the existing paper currency. That, however, is an ordinary operation in finance and presents no difficulty. The effect of this construction is to secure the lender against the risk of the dollar depreciating. We have already quoted the view of the Supreme Court of the United States to the effect that such was the purpose of these clauses. The position is stated very succinctly by Mr. Justice Stone, concurring with the majority, in Perry's case in the following terms (294 U. S. at p. 358):

> I do not doubt that the gold clause in the Government bonds, like that in the private contracts just considered, calls for the payment of value in money, measured by a stated number of gold dollars of the standard defined in the clause, Feist *v.* Société Intercommunale Belge d'Électricité (*supra*); Serbian and Brazilian Loans Cases [P. C. I. J. Series A, Nos. 14 and 15, pp. 32–34, 109–119]. In the absence of any further exertion of governmental power, that obligation plainly could not be satisfied by payment of the same number of dollars, either specie or paper, measured by a gold dollar of lesser weight, regardless of their purchasing power or the state of our internal economy at the due date.

In the Gold Clause cases the dissenting minority shortly expressed the same opinion (294 U. S. 361, at p. 366) in an opinion which was common both to Norman's case (*supra*) and Perry's case (*supra*):

> That the holder of one of these certificates was owner of an express promise by the United States to deliver gold coin of the weight and fineness established by statute when the certificate issued, or if such demand

was not honored to pay the holder the value in the currency then in use, seems clear enough. This was the obvious design of the contract.

We find it impossible to accept the construction adopted by the learned judge, that the bonds in question were bonds for payment in gold coin and in gold coin alone. In our opinion, the view most favourable to the suppliants which could be accepted is that expressed in the opinion last quoted, which would give the holder the right to claim either the gold coin itself or, failing that, the value in the currency then in use. If that view were accepted the contract would be performable in either mode. We prefer to accept the construction which we have stated, on the authority of Feist's case (*supra*), but even on the view just stated the difficulty which led the learned judge to come to the decision which he did would not arise. His conclusion was that as the contract was performable by the delivery of gold coin alone, except as regards the small amounts payable under the coupons, it could not be performed in the United States without breaking the law as established by the Resolution of Congress in 1933.

It has been accepted by both sides that in and from 1933, when the United States went off the gold standard, it has been unlawful in the United States to make or receive payment of a debt in gold, and the learned judge has accordingly held, applying his view of the bond, that its obligation could only be discharged by a payment in gold and that such payment was unlawful now in America and could not be enforced in this country. If the premise is right, that conclusion undoubtedly follows. We need only refer to one authority for the well-known proposition that an English court will not enforce a contract where performance of that contract is forbidden by the law of the place where it must be performed—namely, Ralli Brothers *v.* Compañia Naviera Sota y Aznar (36 *The Times* L. R. 456; [1920] 2 K. B. 287). The question there was as to the amount of freight which could be claimed by a Spanish shipowner under an English charterparty which was to be construed according to English law. Part of the freight was to be paid by the charterers in Spain. When the vessel arrived and the balance of the freight was payable in Spain, a law had been passed in Spain prohibiting payment of freight above a certain amount per ton. The charterparty freight was at a much higher rate and it was held that so much of the contract as required payment of freight in excess of the legal amount was invalid and could not be enforced against the charterers. Lord Sterndale, M. R., quoted with approval a passage from Professor Dicey's work on the *Conflict of Laws* (2nd ed., at page 553), where he says: "A contract . . . is, in general, invalid in so far as (1) the performance of it is unlawful by the law of the country where the contract is to be performed." We accept that principle, just as the learned judge did. Indeed, it is too well established now to require any further discussion. It is based on the principle that it is contrary to the comity of nations that the court of one country should seek to enforce the performance of something in another country which is forbidden by the law of that country.

But according to the construction of the contract which we accept there is no obligation to pay in gold coin. The reference to the gold coin of the United States is merely in order to fix a measure of value or a scale of payment which will apply where the currency depreciates or is devalued, but the payment of that amount can lawfully and properly be made in the currency of the day in the country when the obligation falls due. If that is the true construction of the bond, then we think it is clear that no question of illegality by the law of the United States can arise.

It is true that in 1933 there was a Resolution of Congress the terms of which have been referred to in argument and require consideration. The Resolution in question is described as a Joint Resolution approved by Congress on June 5, 1933: "To assure uniform value to the coins and currencies of the United States." It proceeds:

> Whereas the holding of or dealing in gold affect the public interest and are therefore subject to proper regulation and restriction; and Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar coined or issued by the United States in the markets and in the payment of debts; Now, therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled that (*a*) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

The evidence of the United States lawyers is clear and unanimous that that Joint Resolution, which has the force of law, though it provides that "every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public or private debts," does not make it unlawful for a debtor to discharge his full obligation. The distinguished lawyers who gave evidence were all agreed on that point. The Resolution disentitled the creditor to claim more than the amount provided by the Resolution, but if the debtor thought fit to satisfy the obligation according to its full and original tenor, there was nothing to prevent him from tendering that amount to the creditor and nothing to prevent the creditor from accepting that amount. All that it was said was that the difference between the

obligatory amount and the original contract amount could not be regarded as other than a gift. However regarded, it follows clearly from that view of the Resolution that there would be nothing unlawful under the law prevailing at the place of payment to render it unlawful for the British Government to pay over the full amount to its creditors under the bond. That indeed is the view accepted by the learned judge on that hypothesis. If the construction of the bond which we accept, but which he rejected, is the right construction, then the rule in Ralli Brothers *v.* Compañia Naviera Sota y Aznar (*supra*) does not apply. It only applies, in our opinion, if the act in question is prohibited by the foreign law.

It was contended that as the Resolution in question stated a ground of public policy which would be contravened by payment in full under the gold clause in the contract, therefore the English court should not give a judgment which would have the effect of running counter to that public policy of the United States. No authority was cited for that proposition. The statements of the law on this point have all proceeded on the basis that the term of the contract under consideration, if the English court is to refuse to enforce it, must be one which is contrary to and forbidden by the law of the country. It is clear that the law of the United States does not prohibit a creditor honouring his promise to discharge according to the full measure of the gold clause, though he cannot be compelled, since the Resolution, to do so.

We have so far been dealing only with that part of the bond which relates to a payment in the United States of America. It is necessary to refer to the alternative option which the holder has of requiring payment in the City of London, England, in sterling money at the fixed rate of $4.86\frac{1}{2}$ to the pound. In our opinion, if that option is exercised the holders' rights are fixed by that part of the clause which begins "or in the City of London, England, at the fixed rate of $4.86\frac{1}{2}$ to the pound"—in other words, the earlier part of the paragraph which relates to gold coin of the United States of America is inapplicable. The two methods of payment are alternative and are exclusive of each other. That, we think, appears from the form of the paragraph: "Such principal sum and the interest thereon will be paid at the option of the holder, either"—and then come the words which define the scope of the obligation if the payment is to be made in America, and then follow the words which define the scope of the obligation if the option is exercised for payment in the City of London. To the latter option the words "in gold coin of the United States" and so forth, do not apply at all, and, therefore, if the London option is exercised, what the holder is entitled to is such an amount of sterling as represents the amount of the bond, say $1,000. This construction of the London option has the effect of rendering that option irrelevant to the construction of the New York option. The two options, in our opinion, are entirely independent. Each provides for the payment of a particular sum in a particular place in a particular way. According to the New York option, the

obligation is to pay the equivalent of 1,000 gold dollars in the precise form stated. In the London option the obligation is to pay $1,000 according to the measure of value in sterling indicated; the gold clause is not imported in any way into the London option.

For all these reasons we think that the appeal ought to be allowed and that it should be declared that the holders are entitled to be paid at the appropriate dates both on the coupons and on the principal obligation (*a*) if the New York option is exercised, such an amount in dollars as is equivalent to the value in currency at that time of 1,000 gold dollars specified in the obligation; (*b*) if the London option is exercised, the holders are entitled to be paid the equivalent of $1,000 at the fixed rate of $4.86½ to the pound in sterling money of England. The same principles apply *mutatis mutandis* in the case of the interest payments.

BOOK REVIEWS AND NOTES*

The Far Eastern Crisis. Recollections and Observations. By Henry L. Stimson. New York: Harper & Bros., 1936. pp. xii, 293. Appendices. Index. $3.75.

The Secretary of State who conducted negotiations for the United States during the earlier months of Japan's intervention in Manchuria and at Shanghai, places interested scholars in his debt by the publication of this revealing work. In it he narrates chronologically the course of events in China, the political and psychological changes in Japan, the stages in the application of the League Covenant, and the diplomatic moves of the American Government. To this brief but clarifying synthesis he contributes an interpretation of American policy and of the actions taken toward its implementation.

The reader is impressed with the practical idealism that animated Mr. Stimson's program. With it was associated respect for treaty obligations and a keen appreciation of coöperative methods in international relations. His foreword goes so far as to state that his reason for writing was the urgent necessity for the development of effective methods of coöperation between the League of Nations and the United States. This volume is a contribution to our materials on the present status of the coöperative process for the settlement of political controversies, as it is affected by the coexistence of League and non-League Powers.

Mr. Stimson makes it clear that American non-membership in the League was a serious handicap to effective international action. It did not, apparently, affect his attitude of opposition to the first proposal to send a commission of inquiry to the Far East. Subsequently, however, he found it necessary to take measures to avoid the appearance of suggesting League policy, as well as that of acting alone. Had this country been a League member there need have been no independent enunciation of the doctrine of non-recognition, and no recourse to the round-about procedure of a letter to Senator Borah to affirm the Nine Power Treaty. Mr. Stimson speaks frankly of the embarrassment caused by Sir John Simon's communiqué—issued immediately after the historic American notes of January 7, 1932—accepting as *bona fide* Japan's asseveration of respect for the open door policy. He reveals also with what urgency he sought, unofficially, to obtain British consent to a joint invocation of the Nine Power Treaty, and how discouraging it was to be denied a specific reply. Not until the British delegation to the League Assembly moved the resolution of non-recognition was the damage done by disclosure of Anglo-American differences in part repaired.

* The JOURNAL assumes no responsibility for the views expressed in book reviews and notes.—ED.

Two errors occur in factual statements. The statement that the sending of the Lytton commission "constituted the first occasion of the application in the Far East of the methods of judicial examination and settlement of international controversies" (p. 78), overlooks the Japanese House Tax case before a Hague tribunal in 1905. It is also incorrect to state that "in the war of 1895 Japan destroyed China's sovereignty" over Korea, and that "A puppet Korean emperor . . . was then installed" by Japan (p. 192). Korea was an autonomous state under the suzerainty of China prior to the Sino-Japanese War, and her ruling house remained on the throne until the country was annexed by Japan. In certain respects, however, the methods of Japan with Korea parallel those she is now employing in Manchuria, Inner Mongolia and North China.

Important in substance, written in direct and lucid style, interestingly illustrated, and attractively printed, this book should enjoy a wide patronage.

HAROLD S. QUIGLEY

Why We Went to War. By Newton D. Baker. New York: Harper & Bros., 1936. pp. viii, 199. Appendix. Bibliography. Index. $1.50.

Mr. Baker's answer to the question stated in the title of this book attracted a great deal of attention when it was published as an article in *Foreign Affairs* for October, 1936. The book is a reprint of that article, to which has been added an appendix containing President Wilson's war message of April 2, 1917, and his addresses to the Senate and House in the three preceding months.

Few men now living could speak on this subject with such authority based on personal knowledge, but Mr. Baker does not depend on his memory alone. His book gives evidence of careful study of the publications of our Department of State and of the Foreign Offices of other governments, and considerable familiarity with the books and articles of publicists who have written on all sides of this controverted question. His conclusion is that the real causes of our entrance into the war were those stated clearly and convincingly in President Wilson's war message. The immediate occasion was the resumption of lawless submarine warfare.

Mentioning the charge made in recent years that munitions makers and bankers influenced the policy of our Government and ultimately led us into war, Mr. Baker says that he would be "perhaps the hardest person in the United States to convince that munition makers had any influence upon the American decision." In France in 1917 and 1918 the British and French supplied our artillery with cannon out of their surpluses in exchange for raw materials; for infantry rifles we bought a British-owned factory built in this country after the World War began and manufactured the British Enfield because America had no means of manufacturing our own Springfield rifle in sufficient quantities. Pistols were bought from city police departments from their confiscated "concealed weapons" and, though manufacturers speeded up

production, we were at the end of the war still short of the required supply. For months American manufacturers were unable to make heavy ammunition. Typewriter factories were converted into fuse factories, and generally American industrial plants were converted to the material nearest their normal product. Mr. Baker sums up by saying: "A munition industry large enough to be interested, much less influential, in our going into the war simply did not exist."

This review emphasizes Mr. Baker's discussion of the munitions question, but the book is also a valuable contribution to the history of the whole period of our neutrality from 1914 to our entrance into the war.

H. W. TEMPLE

Derecho Internacional Publico. Tomo III. By Antonio S. de Bustamante y Sirven. Habana: Carasa y Cia, 1936. pp. 602. Index.

Dr. de Bustamante's monumental work on Public International Law has reached Volume III. This volume devotes itself to the Civil law branch of the subject. Like Volume I on the Constitutional division, and Volume II on the Administrative division of the work, reviewed by the writer in this JOURNAL when they were completed,[1] the present volume analogizes its subject matter to the corresponding subject matter in national or municipal law. Civil law as used by the author in this respect refers to the law existing within each state or nation which governs the private property and affairs of its citizens and other private persons both corporate and natural within its borders. The national law as thus applied to private persons finds its counterpart in the international law as applied to states as international juristic persons. The present volume shows how a state extends its dominion over portions of the earth and appurtenances thereto by processes of civil law which are not only comparable to those utilized by private persons within a state, but which bear the same names, such as "discovery," "occupation," "succession," "contract," etc., and, after dealing with these processes, takes up the rules of law governing the maintaining, modifying, sharing and losing jurisdiction and control over a state's physical domain after it has once been acquired. The ever increasing importance and use of contracts in international progression of states is recognized by special chapters in which Dr. de Bustamante analyzes the nature, content and effect of treaties from the standpoint of their character, designation, classification, requisites, execution, adhesion, ratification, promulgation, registration, interpretation, operation and extinction, in the careful, scientific and understanding way which has so eminently marked his participation in deliberations and decisions of the World Court on this as well as other subjects in the field of international law.

As advancements are made within a state from primitive individualistic conditions to those of complex and interdependent social relationships, the civil law imposes more and more societal obligations on private property and

[1] Vol. 29 (1935), p. 168.

every thing and person connected with it. The last chapters of the present volume carry this same development forward in the international field and deal with the responsibility a state assumes toward other states and their nationals for what takes place in its territorial domain affecting them or their property or interests injuriously. While the author emphasizes the view held in most of Latin America restricting the state's obligation to "duty" owed alike to its own nationals and those of other states, he presents practically all the doctrines of the past and present as to the extent of responsibility from the minimum or no responsibility to reparations though without fault, as in the extreme case of necessity or defence when the injury suffered contributes materially to the success of the injuring state. He then discusses these doctrines in action and what disposition the law actually makes of claims against states in this field of injurious acts or omissions, and closes with an interesting chapter on the various ways of losing the right to assert such claims by the lapse of time and the immunity afforded by the law of prescription.

The writer can only repeat what he has said in his review of the previous volumes on Dr. de Bustamante's mastery of the subject, his simplicity, charm and strength of expression in the Spanish language, and the generous forum he allows in these volumes to the scholars of all nations, and join with other members of the legal profession in awaiting with pleasant anticipations the forthcoming volumes of his great work on the Penal and Procedural branches of Public International Law. H. MILTON COLVIN

International Legislation. A Collection of the Texts of Multipartite International Instruments of General Interest. Edited by Manley O. Hudson with the collaboration of Ruth E. Bacon. Washington: Carnegie Endowment for International Peace, 1936. Vol. V, 1929–1931. pp. xlii, 1180. Index. $4.00.

This volume is a continuation of the excellent series, the first four volumes of which, covering the years 1919-1928 and published in 1931, were reviewed in an earlier number of this JOURNAL (Vol. 26, p. 435). The present volume contains the text of multipartite instruments opened for signature or otherwise promulgated during the period from July 1, 1929, to December 31, 1931, together with a few subsidiary instruments of more recent date. It may be a matter of some terminological interest to note that of the 136 texts contained in the present volume only two are designated as "treaties." Forty are designated as "conventions," 29 as "agreements," 42 as "protocols," the others as "arrangements," "statutes," "declarations," "regulations," "*procès-verbaux*," etc.

In adverting to the utility of the present collection the author calls attention to the fact that many of the texts which it contains will not be found in the *League of Nations Treaty Series*, either because they belong to the class of treaty engagements which are not required by the Covenant to be regis-

tered with the Secretariat and published, or because the obligation of registration has not been performed by the parties; while others, such as the international labor conventions, have been deliberately omitted from the *Treaty Series*. As in the earlier volumes, the present one contains some texts which have never come into force and may never come into force. They have been included, however, for the reason, as the author is justified in believing, that they may be of interest in the study of the history of the legislative effort in the particular field to which they relate and should therefore be made easily accessible.

The size of the present volume shows that there has been little abatement in recent years in the process of international legislation. An examination of the texts which it contains shows also that in quality much of it is of considerable importance. Among the more important instruments contained in the present volume may be mentioned the Geneva conventions of July 27, 1929, for the amelioration of the condition of the wounded and sick in armies in the field (ratified by 33 states) and concerning the treatment of prisoners of war (ratified by 29 states), the Warsaw convention of October 12, 1929, for the unification of certain rules regarding air transport (ratified by 21 states), the agreement of January 20, 1930, regarding the complete and final settlement of the question of reparations, the Hague nationality conventions and protocols of 1930, the London treaty of 1930 for the limitation and reduction of naval armaments, the Geneva conventions of the same year on financial assistance, and for the unification of certain rules concerning collisions in inland navigation, and various international labor conventions.

The general plan of the present volume is that of the earlier ones. The texts are reproduced in parallel columns in French and English—where all or most of the parties are American states, in English and Spanish. Each text is accompanied by an editor's note indicating the number of ratifications which have been deposited, if the instrument is subject to ratification, and stating whether or not it is in force. Usually also there is an historical note relative to the instrument and always a valuable bibliography of the literature about it.

What was said in the review of the first four volumes regarding the utility of this collection and of the careful, scholarly manner in which the distinguished editor did his task can be equally said of the present volume.

JAMES WILFORD GARNER

Les Mystiques Politiques Contemporaines et Leurs Incidences Internationales. By Louis Rougier. Paris: Librairie du Recueil Sirey, 1936. pp. 124. Fr. 12.

These six brief lectures delivered before the Graduate Institute of International Studies in Geneva, Switzerland, in June, 1935, have a much greater value than might first be surmised from a casual perusal. Their very brevity

is evidence of closeness of reasoning and of the conciseness of the conclusions of a man who has attained mature standards of judgment and solid convictions. Professor Rougier is clearly a political and economic expert who understands his own times in an adequate historical setting. His analysis of Monarchy, Democracy, Sovietism, the Corporative and the Totalitarian States is masterly.

No thoughtful and conscientious student of international affairs can afford to neglect to read carefully and ponder earnestly these scholarly and realistic studies of contemporary political phenomena. They are written primarily for those students who already have fixed their own standards of appreciation and reached their own independent conclusions. If in agreement with Professor Rougier, they will find a vigorous and lucid support for their views. If in disagreement, they may find it imperative to alter their views or find a sounder justification for their conclusions.

Professor Rougier bases his entire approach to the appreciation of contemporary forms of government on the interpretation of mysticism as being an ensemble of faiths accepted under "the pressure of social conformity." He quotes Pascal in this connection: "Custom is entirely equitable for the sole reason that it is accepted; it is the mystical foundation of its authority." In other words, the predilections people may have for Democracy, for Monarchy, for Sovietism or Fascism, are essentially a mystic faith which may evince a religious and even fanatical fervor. Men live politically by faith. And this faith, this mystic creed, may have a most important and decisive incidence on international relations. Professor Rougier naturally is greatly concerned with the dangers of existing conflicting faiths and sees a satisfactory solution "in a return to the practice of political, economic, and cultural liberalism within the framework of a constructive internationalism." This solution may sound vague, but a careful consideration of these lectures will leave no one in doubt as to the definite reasons for this conclusion. To some it will seem inadequate and that a deeper spiritual solution more in accordance with earlier ideas of mysticism is required. In any event, this is the special value of Professor Rougier's challenge to clearer thinking about international relations. He has indicated the need of a moral sense of responsibility by all students of political institutions and activities. One cannot remain an indifferent spectator and commentator. He must become in some sort a political mystic with a dynamic faith that creates order out of chaos and soundly constructed political systems.

I am most grateful for the opportunity to read these most stimulating lectures, and I desire to recommend them most earnestly to all who seek to make their own constructive contributions to a better understanding between peoples. We should not fail to realize that international conflicts are basically *conflicts* of faiths and that permanent peace is to be found only in a common faith.

PHILIP MARSHALL BROWN

La Vengeance Privée et les Fondements du Droit International Public. By Jacques Lambert. Paris: Librairie du Recueil Sirey, 1936. pp. 136. Fr. 10.

The author traces the development of private vengeance among ancient peoples as described in the Bible, among the Arabs of the pre-Islamic and post-Islamic periods, among the Germanic tribes, in the Italy of the Middle Ages and in Corsica and Sardinia down to the last century. He observes a comparable development in nearly all of them according to their stage of social organization. These stages lead from that of the ruthless feud between families, clans or tribes, to a system of compensation for injury fixed by persons first occupying a position of guarantors and afterwards of arbitrators. He explains the rule of "an eye for an eye, a tooth for a tooth," so often misinterpreted and misunderstood, as an advance from unrestricted private vengeance to one of expiation. He regards this advance as perhaps the greatest ever made at any one time in penal law (p. 114).

It is difficult to draw from the material any immediate solution of the problems confronting international life of the present day; nor does the author make any such claims. What he affirms, however, is that if war is ever to be eliminated, it must be on the basis of the development of an institution which substitutes pacific means of regulating conflicts in place of private violence. The author does not assume to have found the key to this problem in his study of private vengeance among the peoples of the past. He concludes, however, that as the state has found a means of leading vengeance into other channels, the international community must persist in its effort to develop institutions which will subordinate the reign of force to the reign of law. In this process, peace must be imposed by neutrals or, as the author maintains, those less interested in the conflict must cease to consider themselves as neutrals because of the danger that any war may become general (p. 133). ARTHUR K. KUHN

The British Year Book of International Law, 1936. 17th year. New York and London: Oxford University Press, 1936. pp. vi, 260. Index. $5.50; 16s.

In the leading article on "The Protection of Vested Rights in International Law," Dr. G. Kaeckenbeeck makes the following summary:

> We come, therefore, to the conclusion that the principle that a cession of territory does not affect private rights is valid only as long as new legislation is not introduced which affects them; that the introduction of such legislation is not prohibited by international law, and is not in particular made by it dependent on payment of compensation; that the principle of non-retroactivity applies to the interpretation of the new laws only as a matter of municipal law, but that a systematic violation of this principle would be resented as conduct falling short of the international standard of civilized society; that the question whether and to what extent a state will grant compensation for legislative suppression

> or infringement of rights is properly a matter for state legislation or judicial application, but that refusal by a state to grant compensation where elementary justice requires it, even though it could not be impugned by its nationals, may, if applied to foreigners, be taken up by the state to which they owe allegiance, and may eventually fail to pass muster before an international tribunal.

In his valuable discussion of "Sanctions Under The Covenant," Sir John Fischer Williams does not assert, but hazards the conjecture:

> That the coming generation may emphasize neutral duties rather than neutral rights and that there may be wars where not "to take sides," in thought if not in action, may be impossible for any man who recognizes the claims of morality. For when a world-wide conflict is in progress, if it is not a mere "dog-fight" but a struggle in which great moral issues are at stake, neutrality though it may be respectable is not widely respected.

Other articles are: "The Local Remedies Rule in the Light of the Finnish Ships Arbitration," by Alexander P. Fachiri; "Aircraft and Commerce in War," by H. A. Smith; "The Covenant as the 'Higher Law'," by H. Lauterpacht; "The Case of the *I'm Alone*," by G. G. Fitzmaurice; "The Gold Clause," by B. A. Wortley; and an obituary notice of Sir William Harrison Moore.

Professor Arnold D. McNair in his study of "Collective Security" suggests that there has been a change of the attitude toward war, and observes: "This new policy of collective security has suffered . . . in popular esteem by being treated too much as a great ethical ideal and too little as a sound business proposition." He agrees with Sir Samuel Hoare's statement, "If the burden is to be borne it must be borne collectively," and declares that his own country can do no more than its "fair share," but he ends with a hopeful note to the effect that if Great Britain holds firm to her "declared policy which comprises collective revision of the *status quo* as well as to the collective resistance to aggression" then "the principle of collective security" will eventually be established and will introduce "a new and saner epoch to international relations."

Professor J. W. Garner, who is on the staff of the Year Book as correspondent for the United States, discusses, "Recent Neutrality Legislation of the United States," and subjects this hasty and ill-conceived legislation to a well-merited criticism. He expresses the hope that "the present temporary legislation . . . may be replaced next year by a permanent and more thoroughly considered law. . . ." Of importance from a theoretical point of view is J. G. Starke's discussion of "Monism and Dualism in the Theory of International Law."

We find, of course, in addition to these special articles, the other annual contributions, namely, the important "Notes" on international events and the "Decisions" of international tribunals and of those national decisions which involve points of international law. There are also the extremely valuable reviews of books and current periodicals and the bibliography, conveniently arranged under a score of topical headings.

The group of British jurists who are responsible for the editing and publishing of this important annual preserve the high standard set by the sixteen preceding volumes and continue their notable contribution to the science of international law. *The American Journal of International Law* and *The British Year Book* supplement each other and constitute indispensable aids to all those who desire to keep abreast of the progress of international law.

ELLERY C. STOWELL

Juridical Bases of Diplomatic Immunity: a Study in the Origin, Growth and Purpose of the Law. By Montell Ogdon. Washington: John Byrne & Co., 1936. pp. xx, 254. Index, table of cases, and bibliography. $4.00.

The subject of diplomatic immunities is perhaps the most mature branch of the law of nations. Numerous monographs have been devoted to detailed exposition of its positive principles and rules, but there has been, up to this time, no thorough study in English of the theoretical bases of diplomatic immunities, of the *rationale* of the law. This gap is closed by the present work, in which the writer fulfills his purpose of investigating "the fundamental postulates underlying the law of diplomatic immunity in the hope of uncovering foundations on which States may purposefully build that law to meet changing needs." (p. vii.) After a rapid historical survey, Professor Ogdon finds that the various theories which have been advanced as the fundamental bases of diplomatic immunities are reducible to the following: "Territorial Immunity as explained by the Fiction of 'Extraterritoriality'" (Ch. IV); "Personal Immunity as explained by the Theories of 'Representative Character'" (Ch. V); and "Functional Immunity as explained by the Necessity of Protecting the Channels of Communication between States." (Ch. VI.) The fiction of exterritoriality is rejected on the grounds that it "does not furnish a sound reason for immunity, that it conflicts with recognized usage, produces undesirable results, is misleading and cannot be relied upon as a test in determining what the law is." (p. 103.) Theories of the "representative" character of the diplomat are likewise uncertain guides to the law since, if strictly construed, they would restrict immunity to acts performed in the exercise of official functions, thus eliminating diplomatic immunities for private acts. The above theories, in all their variant and hybrid forms, presuppose a single basis which determines in every case whether a given act is to be considered "exterritorial," or to have been performed by a diplomat is his "representative" capacity. This fundamental basis is the necessity of granting such immunities as are essential to the independent performance of the diplomatic function. The writer, however, does not fall into the error of underestimating the extent to which the "exterritorial" and "representative" theories have influenced the formation of the positive law.

In his final chapter, Professor Ogdon draws certain conclusions: that immunities which have become non-essential be interpreted restrictively, and that diplomats be required to refrain from commercial activities as a condi-

tion of their reception. The reviewer believes that the preceding investigation would support more extensive and fruitful conclusions. That the diplomat enjoys only a procedural exemption, and that he is fully subject to the substantive law of the receiving state for unofficial acts, might have been more clearly emphasized. (See pp. 84–86, 223.) The tendency to restrict the immunities of members of the diplomat's family and *suite* should have been fully examined. The extensive exemptions enjoyed by members of these classes, and not those of the heads of missions, constitute the principal source of difficulty in most countries today. Finally, a study of the position of agents of international organizations would have been useful, since their exemptions are based squarely upon the theory of immunity which the writer accepts, and not upon the "archaic precepts" of the older law. This subject appears to have been excluded on the purely external ground that international agents are not "diplomats" since they represent no "state."

These are, however, faults of omission. Professor Ogdon has written a valuable study which, in a sense, may be said to supply a clear statement of the theoretical presuppositions of the "Draft Project on Diplomatic Privileges and Immunities" published in 1932 by the Harvard Research in International Law and issued as a Supplement to this JOURNAL for that year.

LAWRENCE PREUSS.

The Ratification of International Conventions. A Study of the Relationship of the Ratification Process to the Development of International Legislation. By Francis O. Wilcox. London: Allen & Unwin; New York: Macmillan Co., 1936. pp. 349. Index. $3.50.

This timely book deals with a subject of vast importance to the quest for the advancement of international law. The study is divided into three parts, relating respectively to "Ratification in Theory and Practice," "Induced Ratification of International Conventions," and "Methods of Evading Ratification."

In Part I, the author deals with problems of signature, necessity for ratification, the nature of ratification, irregular or unconstitutional ratification, reservations, adhesion or accession, registration, promulgation, non-ratification, the obligation to ratify, and causes for delay in ratification. A chapter is also devoted to the constitutional provisions regarding treaty-making in Japan, in the United States, in the European states, and in the British Empire.

In Part II, "Induced Ratification" is discussed from the standpoint of the work of the League of Nations, the International Labor Organization, and the Pan American Union. In a penetrating chapter relating to the influence of the League upon the ratification of treaties, the conclusion is reached that "in a little over a decade, [the League] has created a huge body of international law, much of which is almost universal in its application. This 'universal' acceptance of international agreements is largely characteristic of

the post-war era, and is due in a great measure to the permanent machinery of the League" (p. 160).

Figures are given regarding the "ratification efficiency" of the International Labor Organization. After reviewing the creditable record with regard to the ratification of labor conventions, the author states that they "present vivid evidence of the advancement made in the past fifteen years under the banner of the International Labour Organization" (p. 203).

In his treatment in Part III of the methods of evading ratification, the author trenches upon a field that has grown more and more important since the advent of the League and the International Labor Organization, and the day of multilateral treaties. As the number of treaties has increased, the opportunity of evading ratification has also increased.

In concluding remarks, the author observes that democratic government which allows the legislature to participate in ratification of treaties, has retarded ratifications in many cases, but international organizations "aided by their corps of technical experts and by the growth of an 'international atmosphere,' have made world-wide coöperation possible in several fields which the International Community of the pre-war era was apparently incapable of regulating in a satisfactory manner" (p. 311).

Appendices carry tables of the number of ratifications of conventions and agreements concluded under the auspices of the League, the International Labor Organization, and the Pan American Union. A comprehensive bibliography is given.

A brief review is inadequate to indicate the serviceability of this meaty volume. It should take rank as a leading contribution to the literature of international law. In the present status of attachment to national sovereignty and the absence of an international legislature, progress in advancing international law must be based largely upon multilateral treaties and conventions; these must of course be ratified. J. EUGENE HARLEY

Vers une Organisation Politique et Juridique de l'Europe. By Raymond Léonard. Paris: Rousseau & C^ie^, 1935. pp. xii, 311.

After the World War, the League of Nations was formed as an institution based on the principle of universality. But at the same time movements spread for a Pan European Union, giving expression not only to the economic ties, but also to the spiritual bonds and to the cultural unity of the peoples of Europe. A particularly important movement of this type was organized by the Austrian, Coudenhove-Kalergi, and Aristide Briand accepted the honorary presidency of this Vienna Pan European Union.

This book is a detailed history and analysis of Briand's proposal for a Federal European Union, first launched in Geneva in 1929, and followed by the French Memorandum of May 17, 1930. This memorandum proposes a Federal Union with organs of its own and—in characteristic antithesis—promises the upholding of the full sovereignty of the single European States; it

subordinates—very characteristically—economic problems to politics and emphasizes the static aspect of security on the basis of the Versailles Treaty. It so contains all the germs of its failure. The replies of the European Governments clearly showed the difficulties and antagonisms: anxiety for the weakening of the League of Nations, fundamental split of Europe into the blocs of *status quo* and revision, problems of European States not members of the League, of European colonies, dogma of sovereignty, peculiar position of Great Britain as the center of a world-wide Empire, universalism versus regionalism; to that we have to add the attitudes of non-European members of the League.

The author relates in detail the six sessions of the *Commission d'Étude*, which the XIth Assembly had created as a strictly League of Nations Commission. The sessions were to a great extent devoted to the problems of agricultural credits and preferential tariffs to the Danubian countries. Little was achieved and the sessions were discontinued. Apart from the above-named basic difficulties, to which the author devotes a special chapter, severely combating the dogma of absolute sovereignty in a long, theoretical exposé, new events had created an unhappy atmosphere: Austro-German Customs Union, Japanese aggression in Manchuria, death of Briand, failure of the Disarmament Conference.

All that was followed by a long series of bilateral or regional pacts: Non-Aggression Pacts between Soviet Russia and her neighbors, Pact of Organization of the Little Entente 1933, of the Balkan Entente 1934, of the Entente of the Baltic States 1934, Mussolini's Four Power Pact, creation of the Rome bloc (Italy, Austria, Hungary) 1934, Stresa Conference 1935, Franco-Russian Pact of Mutual Assistance. The author consoles himself by stating that history shows that movements of federation do not succeed at once, that a long preparation is necessary, and hopes that Europe is on the right road. Unfortunately this hope cannot be shared by this reviewer. The events posterior to the publication of this book (Ethiopian crisis, end of Locarno, Spanish Civil War, German-Japanese Anti-communistic Pact) show that Europe is rather dangerously moving on the road of old-fashioned military alliances, concluded for purposes of Power Politics. The present status of Europe certainly is in strange contrast to Briand's vision of an European Union. History has led today, more than ever, to the Disunited States of Europe.

The book, nevertheless, conserves its full value, not only because of being an accurate, well-documented and objective study, but also because of the lasting necessity for Europe, to quote Caillaux' words, "to unite or perish." But, notwithstanding its value, the book makes sad reading; for, as Professor Georges Scelle in his excellent preface states: "Le livre est, en effet, l'histoire d'une faillite."

JOSEF L. KUNZ

La Rappresentanza nel Diritto Internazionale. By Angelo Piero Sereni. Padua: Cedam, 1936. pp. xx, 455. Index. L. 50.

In Italy international law is undergoing a development which deserves

consideration beyond the frontiers of the country. Professor Anzilotti, who is a member of the Permanent Court of International Justice, has inaugurated this development for which Professor del Vecchio is co-responsible. Mr. Sereni, who is professor of international law at Ferrara, attempts to create a synthesis between the doctrines of Anzilotti and del Vecchio. From Anzilotti, Sereni inherited his belief in the superiority of the international legal order to the legal order of the State, and his preference for an abstract presentation of the material. With his theory of natural law, del Vecchio stood godfather to Sereni's conception of an "objective international law" which in its last analysis is based on rules of law which are inherent in any legal order.

On the basis of these ideas, Professor Sereni develops his theories of the "representation in international law." His conception of representation is narrow and is confined to representation among subjects of international law. It, therefore, does not cover the exercise of delegated authority by a protecting Power or by a federal State. Sereni deals merely with the representation of a State by another State in negotiations with a third State. He devotes a large part of his study to a proof of the thesis that representation is not based on a treaty between the representative State and the represented State, but on a treaty between the represented State and the third State. This thesis leads Sereni to intricate conclusions. For example, he denies that Poland's administration of the foreign affairs of Danzig is based on the Treaty of Versailles or on subsequent agreements between Poland and Danzig. Instead, he maintains Poland's representation of Danzig is based on a tacit understanding between Danzig and the Powers.

In a supplementary chapter the author deals with *negotiorum gestio* in international law.

W. B. STERN

The United States and Europe, 1815–23. A Study in the Background of the Monroe Doctrine. By Edward H. Tatum, Jr. Berkeley: University of California Press, 1936. pp. x, 315. Index. $3.00.

This interesting and stimulating volume severely criticises the earlier interpretations of the Monroe Doctrine and offers an interpretation which limits its origin to American conditions and experience and thought. It is cleverly written.

The author boldly challenges the conclusions of all earlier historical writers who included as a prominent factor in the origin of the famous Monroe declaration of policy of 1823 the fear of the threatened activities of the Holy Alliance in Latin American affairs and of threatened Russian aggressions on the Northwest Coast. He regards such a conclusion as a false assumption based upon erroneous premise. He states that the American bold determination to enunciate clearly to the world its general foreign policy, which would give it a larger leadership on the American continent, was encouraged by the knowledge of the non-hostile attitude of Russia and France and also influenced by Secretary Adams' views of the hostile attitude of England.

He has based his narrative on published material, largely upon contemporary newspapers and published correspondence of the period treated. Evidently he has not examined the extensive unpublished manuscript archives of the Department of State which are necessary for a complete study of the period treated. He does not mention the fact that, immediately following the famous declaration of policy, Monroe (acting through Adams) sent a special agent on a secret mission to report upon the proceedings of any new general European congress which might be held with a view to the consideration of the affairs of Spain and South America.

In considering the author's criticisms of the older historians, one may suggest that in exaggerating the danger of the Holy Alliance they were animated by their recognition of the principle that American foreign interests and foreign policy were determined by American domestic situations and the needs of American security, which the author properly emphasizes as a true basis of foreign policy.

J. M. CALLAHAN

Force. By Lord Davies. London: Constable & Co., Ltd., 1935. pp. x, 242. Index. 35s. 6d.

Lord Davies has courage. He might easily have embellished his title and camouflaged his thesis in softer terms. He could have written on "Sanctions of Local, National, and International Law," and many chapters might have ensued before stark realism emerged in the form of a plea for force—rightly used, of course, handmaiden to justice, restrained and internationalized—but force for all that. On the contrary, Lord Davies is determined to face at once what he believes to be the inevitable necessity of providing an International Police Force and he hides behind no verbiage. "Force" is the title and it appears in the heading of every chapter save two. The use of force by and in relation to democracies, dictatorships, imperialists, factions, youth, the church; force in the past, force in the future; national force (police) and external force (war). Some of the material appears extraneous, but the essential thesis is clear: The crucial problem of international relations today is not how to abolish the use of force—disarmament plans and the outlawry of war are futile—but how to guaranty that force shall be employed collectively in the interest of justice, that is, for the enforcement of international law and protection against aggression. This "pooled security" is thus justified: "There is only one defence against a potential aggressor, that is to implant in his mind the certainty of an overwhelming reprisal by a superior force, under the control of an international executive and backed by the moral support of an impartial authority—the League. There is no other way of combining moral and physical force so as to produce the maximum deterrent effect upon the would-be disturber of the peace" (p. 181).

Lord Davies' name is closely associated with a group which has been active in advancing the idea of an International Police Force (his use of I.P.F. indicates a certain intimacy) and no one can doubt his whole-souled attachment

to the cause. Here he has swept away the alleged bogey-like obstacles to the realization of the plan—"super-state," "sovereignty," "mistrust and evasion," and "impracticability"—and he has listed the material and psychological benefits bound to ensue, ranging from the "inauguration of the reign of law" to a general depreciation of the human combative instinct. Nevertheless, one comes to the end possessed of a growing uneasiness. Whose law and whose justice are to be turned over for enforcement to this colossal "pool" of the advanced instruments and agents of destruction? Certainly not existing international law, for the author himself refers (p. 72) to that as "only a compilation of principles, rules, bargains, settlements—not law, but the appearance of law—a mirage—which only deludes people by vindicating a belief in something which is unreal and inoperative." Justice and aggression receive no definition. The author has been courageously realistic and frank, but he must, to secure converts, be consistent; realism will breed realism and not a great deal of practical thought is necessary to prompt this vital question. The conclusion seems to be that the need for an international order worthy of sanctions is about as real and pressing as is the need for sanctions strong enough to ensure the triumph of law and justice. A. E. HINDMARSH

Vital Peace: A Study of Risks. By Henry Wickham Steed. New York: Macmillan Co., 1936. pp. 346. Index. $2.75.

The author of this book is a well-known and exceptionally well-informed and experienced journalist. In true journalistic style, he first gives (in a hundred pages) a graphic, one-sided picture of the evils of war and its causes; and then devotes the rest of his book to the progress and meaning of "vital peace," or to what he considers the only way of preventing war.

In characteristic British fashion, he soft-pedals in his list of war's causes its two most important ones, namely, political and economic imperialism and the armaments system which makes imperialism possible. He does not cite Great Britain, France and Russia, the three greatest imperialist Powers, before the tribunal of his readers' judgment; but he does not neglect to denounce "the ecstatic belief in the God-given right of the German people to rule over other races, in virtue of the inborn superiority of the Nordic Germanic blood." Though he admits that "there may lie behind [this belief] political and economic aspirations," he states that "the most powerful fighting-machine Germany has ever possessed is now being built up," and that "this formidable machine depends for its ultimate efficiency upon the old *furor teutonicus*, the berserker ecstasy into which Teutonic warriors fell either in the frenzy of combat or after drinking potions sapiently distilled from fungi."

Ignoring the imperialism and armaments system rampant among the members of the new Triple Entente, and seeing it loom large among the members of the new Triple Alliance, Mr. Steed concludes that "war arises from a conflict between incompatible moralities"; and his chief purpose is to rally

his readers (especially those in the United States), "in open-eyed fearlessness" under a code based on the *right* moralities. This code includes the familiar proposals of a sacrifice of sovereignty, the abolition of neutrality, the recognition of "collective security," and the enforcement of a "vital peace" by overwhelming "sanctions."

How vital such a peace would be, Mr. Steed gives a glowing account in his last chapter; but in the midst of his eloquence, and throughout his book, he is oblivious of the patent fact that such a vitality would be a Siamese twin to the vitality of war, and the peace born from it would be a glorified child of Mars or Thor.

WILLIAM I. HULL

Peace or War. The American Struggle, 1636–1936. By Merle Curti. New York: W. W. Norton & Co., 1936. pp. 374. Index. $3.00.

The author of this book, professor of history at Smith College, gave us his first published work, *American Peace Crusade,* in 1929, an excellent summary of the American peace movement from 1815 to 1860. The present more ambitious volume is the first attempt by a historian to tell the whole story from the colonial days to the present. Through its ten chapters one senses not only an earnest effort to state the facts but to relate them to the other major events in American life. Each of the chapters sketches a period in the development of what the author frequently calls "the fight for peace." There is an account of the peace "pioneers" extending from 1636 to 1860, of the effects upon them of the Civil War, of obstacles they met during the years 1870 to 1900, of their renewed energy between 1870 and 1898, of forces making for imperialism and world organization from 1890 to 1907, of evidences of "victory" from 1900 to 1914, of the effects of the World War and of the "renewed struggle" since. The author aims, somewhat overstrenuously in places, to make the story "moving and dramatic," employing adjectives now and then more as a pleader than a historian. On the whole, however, one finds here the completest picture of the American peace movement, its persons, ideals, weaknesses and strength.

In the later portions of his book the professor appears to allow his own bias to dictate some of his sentences, as when, for example, on page 252 he refers censoriously to "two train-loads of patriots—with malice and self-righteousness in their hearts," and on the next page as a partisan to the fist-fight between Henry Cabot Lodge and Alexander Bannwart. Even less excusable, on page 254 he lifts two sentences from the context of an editorial note appearing in *The Advocate of Peace* of May, 1917, and, quoting them exclusively, gives an entirely erroneous impression not only of the editorial but of the attitude of the American Peace Society. In spite of many superficialities and ineptitudes in the peace movement, the author appears curiously to believe that all the "pacifists," extremists especially, have been noble contributors to a high ideal, and that all the "militarists" have been malicious persons opposed to all forms of effort for world peace. Rarely in this ex-

cellent work is there any attempt to define such weasel words as "pacifist," "militarist," "capitalist," "profit system," "peace," "war," "fight," "crusade," "basic causes of war," "imperialism," "navalism." One lays the work down with a feeling that the author—an admirer of non-resistant pacifism and of socialism, advocate of a social order "more definitely collectivistic"—has small regard for any friends of the peace movement outside the battle-royal arena of "pacifism." But for anyone interested to meet persons, good, bad and indifferent, who have kept the American "peace movement" alive, throughout this country's history, here is to date his most useful text.

ARTHUR DEERIN CALL

"Pax Nostra": Examen de Conscience International. By Gaston Fessard. 7th ed. Paris: Editions Bernard Grasset, 1936. pp. xx, 464. Fr. 18.

This book originated in conversations of the author with M. Gabriel Marcel and others on the situation in which they found themselves with regard to the problem of peace and war and their individual relation to it as a result of Hitler's universal military service order of March 16, 1935, and the six-months' extension by France of the military class then serving. It is divided into three parts.

Part I states the "Problem and Principles of Solution." Starting from the two premises that pacifism is the enemy of peace and nationalism is the enemy of the nation, the author builds up to what he considers the "Christian attitude" toward the subject by developing his idea of moral personality as applied to the family, one's country and the community of nations and his idea of what the community of nations should be. He poses two dilemmas, one for the patriot and one for the peace-lover. The patriot must "accept as a necessary ideal this Community of Nations with all the sacrifices which its realization may entail for his country, or reject this ideal as chimerical and consider his country as, above all others, the last end, in his eyes, of world order." The peace-lover must "work to realize this Community of Nations as the superior organic unity which, far from destroying its elements, the different countries, on the contrary strengthens them, or work to suppress all inferior distinctions and unities (countries, families . . .) in order to substitute therefor a single community of individuals equal and identical in their humanity." Pacifists and nationalists, he tells us, have chosen the second member of these two alternatives. As for himself, after mature deliberation and analysis in the light of Revelation, he believes it his duty as a Christian to elect "the first member of both alternatives, the first defining henceforth the ideal to which he should strive; the second, the conditions under which he could realize it."

Part II divides "The Elements of the Christian Order" into the order of justice and the order of charity, and gives conclusions concerning the author's attitude on these points.

In Part III, "Progress of the Christian Order," the author recognizes that

charity and the perfection of charity is the absolute ideal for nations as well as for individuals, but he refuses always to sacrifice justice and charity toward those nearest to him, under the pretext of tending toward this perfection of charity. In other words, charity should begin at home. Moreover, while he recognizes that he owes his country a predilection above all other countries, he refuses, under the pretext of love of country, to confine his quest for justice and charity within its geographical limits. The community of persons which brings about the attainments of these ideals, he believes, is Christianity, not the Christendom of historical fact, but the Mystical Body of Christ, a religious representation transcending a visible Church.

A concluding chapter recapitulates the "examination of the international conscience" by giving the author's judgment on the past, his present attitude and his outlook toward the future. HERBERT WRIGHT

Académie de Droit International, Recueil des Cours, 1935. Paris: Librairie du Recueil Sirey, 1936. T. I, pp. 715; T. II, pp. 661; T. III, pp. 650; T. IV, pp. 638. Indices. Fr. 90 each.

These four volumes, constituting Vols. 51, 52, 53 and 54 of the whole collection, contain the lectures delivered at the 13th annual session (1935) of the Hague Academy of International Law. It may be remarked in passing that 263 auditors, 55 of whom were women, representing 26 different countries, registered for the courses offered in 1935. As usual, the largest number, 126, came from The Netherlands, 38 from Germany, 23 from France, and 7 from the United States. The lectures—142 altogether—were given by 23 professors representing 16 countries or nationalities. As in former years, France furnished the largest contingent, 5 (Bartin, Hamel, Jèze, Le Fur and Niboyet). Italy followed with 3 (Diena, Messina and Pallieri), and the United States with 2 (Finch and Walsh). The other lecturers were Balas (Hungary), Borel (Switzerland), Fabre-Surveyer (Canada), François (The Netherlands), Ianouloff (Bulgaria), Kaufmann (Germany), Négulesco (Rumania), de Orue y Arregui (Spain), Baron de Taube (Russia), Pusta (Estonia), Séfériadès (Greece), Verdross (Austria), and Ch. de Visscher (Belgium).

As in former years, the lectures covered a wide field: public and private international law, including international administrative law and international maritime law, international commerce and finance, international organization and relations, arbitration and denial of justice, international labor legislation, the general principles of law, the sources of international law, nationality and the juridical status of the Baltic Sea.

The problem of the access of individuals to international courts was the subject of M. Séfériadès' lectures. He dwelt upon what he regards as the present unsatisfactory situation of the individual and especially the alien, who if he is denied justice in the national courts of the state in which he resides is not allowed on his own initiative to seek redress in an international

court; he reviews the discussions in the Institute of International Law on the proposal to give him this privilege, states the arguments in favor of the proposal, answers those which have been put forward against it, and declares that if the proposed reform were adopted, it would mean an immense contribution to the cause of justice. He denies that it would necessarily involve a derogation from the sovereignty of states or be inconsistent with the existing doctrine that only states are subjects of international law.

Professor Verdross's lectures dealing with the general principles of law in international jurisprudence is largely a commentary on paragraph 3 of Article 38 of the Statute of the Permanent Court of International Justice which charges the Court with the duty of applying "the general principles of law recognized by civilized nations." This article, he thinks, is merely a codification of an established rule of international practice—one which has always been recognized and applied by international courts. Article 38, therefore, really confers no power on the judges which they would not have had without the article. He then discusses the "general principles" which in his opinion the article envisages and cites the cases in which arbitration tribunals have in the past applied such principles. He finds that in only one case decided by the Permanent Court has paragraph 3 of Article 38 been cited, although it has been invoked in a number of other cases.

M. Négulesco's lectures deal with the principles of international administrative law, the sources, nature, province and scope of which he discusses in lucid fashion. He conceives it to be that branch of international public law which deals with the organization and functioning of international institutions created by agreement among states. He discusses the juridical nature of international organs and functionaries, the legal responsibilities of participating states, the administrative jurisdiction of those organs which are charged with rendering decisions and other matters connected with the maintenance and operation of international administrative institutions.

The modern sources of international law was the subject of Mr. Finch's course. Distinguishing between the true sources of international law and the causes, bases, origins and evidences of the law, and also between the sources and the factors which have contributed to its formation and advancement—some of which he evaluates—he considers in turn the law of nature, custom, treaties (which he very properly refuses to limit to those instruments which have been unanimously accepted by states) and the jurisprudence of the courts, both national and international, the quantity of which, as he points out, has so greatly increased in recent years. He remarks in passing that we must not distinguish too strictly between custom and convention as sources of international law, since often treaties are merely declaratory of existing rules of customary law. Finally, he examines paragraph 3 of Article 38 of the Statute of the Permanent Court, which as stated above, was the subject of Professor Verdross's lectures. Mr. Finch's conclusion is that the purpose of the paragraph was, first, to prevent the Court

from declaring a *non liquet* when there seemed to be no rule of international law applicable to the case in litigation, and, second, to remove the excuse which the judges might have for deciding such cases on the basis of their personal opinions as to what was just or unjust.

Professor Charles de Visscher's lectures deal with the denial of justice, a subject which, as he points out, although one of the oldest in international law, is one which has been the worst elucidated. By reason of its complex nature it almost defies definition, and because of divergencies of opinion among the jurists as to its essential elements it can hardly be said that there is yet any generally accepted theory of denial of justice. He discusses in his usual clear and learned fashion the origin and development of the idea, the different senses in which the term is used, the various forms which it may take, its relation to the general rule of the international responsibility of the state and the bearing upon the subject of the rule concerning the duty of the plaintiff to exhaust his local remedy. He points out that if defined in the broad sense of being any delinquency on the part of a state, the term loses its value. On the other hand, it should not be defined in such a way as to limit the responsibility of the state for wrongs in violation of international law which it has done or permitted. He himself limits the term to delinquencies connected with the organization or functioning of the judicial organ, as appears from the definition which he offers: "Every *défaillance* in the organization or in the exercise of the judicial function which implies the failure (*manquement*) of the state in its international duty to provide judicial protection to foreigners." He does not share the view of some jurists that the state is responsible for an erroneous judgment which results in injury to an alien, but he adopts the view of the Institute of International Law that the state is responsible for a manifestly unjust decision. Discussing the duty of the plaintiff to exhaust his local remedy, de Visscher admits that there is no such duty if there is no remedy to exhaust. He criticizes as false the view that there can be no denial until the remedy has been exhausted, and emphasizes that the duty to exhaust must not be regarded as a basis of the right but only a condition of the receivability of the petitioner's claim.

Professor Borel's lectures on means of recourse against arbitral awards fall within a field not unrelated to that covered by de Visscher's course. By reason of his learning and experience as an arbitrator, M. Borel is particularly competent to discuss this subject, which, it may be remarked, had already received considerable attention at the hands of MM. Castberg and Rundstein in their lectures at the Academy in earlier years. He points out that although an award may be null because of want of competence, excess of power, corruption or erroneous application of law, there is no right of appeal by the losing party, whose only resource is to act as his own judge and declare it not binding. Obviously this is a very unsatisfactory situation and unless it is remedied it may injure the cause of arbitration as a means of pacific settlement. As

M. Borel points out, the danger of corruption is not serious, but cases may arise where the arbitrators lack jurisdiction or where they exceed the authority conferred upon them or may erroneously interpret or apply the law governing the issue. Some such cases that have arisen in practice are discussed by him. He examines the proposals that have been made for establishing a right of appeal in such cases, notably that made by Finland in 1929 for conferring on the Permanent Court of International Justice jurisdiction to hear the appeal. He refers to the arbitration treaty of February 12, 1932, between Luxemburg and Norway which provides that if one of the parties claims that an award is null the question of nullity shall be submitted to the Permanent Court for decision. This solution of the problem is, he thinks, about as satisfactory a one as can be found.

Attention may be called in this connection to the lectures of M. Pallieri on private arbitration in international relations, in which the lecturer discusses the evolution and present status of private arbitration in the principal countries, its juridical nature and procedure, the law which governs it and the international conventional legislation on the subject now in force, its need of revision and supplementation, etc.

In the field of international private law may be mentioned the lectures of Professor Diena on the principles of private international maritime law, dealing with such questions as the nationality of merchant vessels, jurisdiction over them, maritime mortgages and contracts, the liability of owners and operators, collisions, salvage, etc. He calls attention to the existing diversity of legislation on these matters and traces the movement for the unification of the law as reflected in the work of the International Maritime Committee and the Brussels Convention of 1926 which he regrets has not been ratified and brought into force.

Reference may be made in this connection to Professor Niboyet's lectures on the notion of reciprocity in diplomatic treaties of international private law, such as those relating to nationality, the treatment of foreigners and the conflict of laws; to those of the Hon. Edward Fabre-Surveyer dealing with the concept of international private law according to the doctrine and practice of Canada, in which he discusses the present state of the legislation and jurisprudence of the Dominion relative to such matters as nationality, domicile, marriage, divorce and the execution of foreign judgments; to those of M. Bartin on a new concept of the empire of local internal law in which he proposes to add what he calls a third chapter to the personal and territorial theories which will include "a category of relations which no one has yet cared to submit to it"; those of M. Messina dealing with the subject of literary and artistic plagiarism in doctrine, legislation and national jurisprudence; and to those of M. François on the problem of statelessness (*apatridie*) which describe the status of those who possess no nationality either because they have never had any or having once possessed it subsequently lost it. After having pointed out the ways by which one may be reduced to this plight, he

discusses the measures which have been adopted or proposed to prevent statelessness or to reduce the number of cases. In this connection he examines the conventions and protocols which resulted from the codification conference of 1930. He himself proposes certain remedial measures, among others the rule that children born of stateless parents be treated as nationals of the country where they are born if they remain there until the attainment of their majority, that the practice of denationalizing citizens on account of long absence be abolished, and that the still more reprehensible practice of denationalization as a punishment for crime likewise be abandoned, since it is a "flagrant violation of the fundamental principles of the organization of the international community." He also condemns the growing practice of reducing certain races or classes, such as the Jews, to a condition of *quasi*-statelessness by depriving them of their civil rights while allowing them to retain their nationality—as has recently been done by the anti-Jewish legislation of Germany.

In the field of international relations reference may be made to the lectures of M. de Orue y Arregui on regionalism in international organization, in which he discusses the present demand for "decentralization" in the organization of the international community as a means of promoting the cause of collective security—a solution which he thinks is highly desirable, considering the widely varying geographical and political situations of different countries and one which would not be incompatible with the principle of unitarianism and universalism so long as the regional organizations are properly fitted into and kept in harmony with the universal organization. He would therefore retain the League of Nations but would divest it of its universal task of guaranteeing security and distribute it among a number of regional organizations.

Another course of lectures in the field of international relations were those of M. Ianouloff on international labor legislation, in which the lecturer traces the evolution of this type of international legislation, describes the International Labor Organization, its juridical nature and activities, the obligations of the member states, the character of the labor conventions, their mode of revision, etc.

Perhaps this is as logical a place as any to mention the lectures of Father Walsh on the fundamental principles of international life, in which he examines critically the nature of what we call civilization, traces the evolution of international relations and the development of internationalism beginning with the Abbé St. Pierre, endeavors to evaluate the influence of such men as Machiavelli, Luther, Calvin, Richelieu, Fichte, Hegel and others, and emphasizes the influence of moral and spiritual forces in international life.

In the field of international commerce and finance may be mentioned the lectures of M. Balas on commercial policy in Central Europe, in which we are given a critical study of the tariff and other commercial and agrarian policies adopted by the states of this region following the World War, some of

which the lecturer thinks are regrettable; those of M. Hamel dealing with international forms of bank credit; and those of Professor Jèze dealing with defaults of the state, in which the learned lecturer discusses in turn the nature of state defaults, the forms which they may take, their effect on the state's credit, the effect of the gold clause in state contracts, how it has been interpreted by the courts, etc.

Two courses of lectures were devoted to the juridical status of the Baltic Sea which has played a large rôle in the international politics of Europe: one by Baron de Taube covering the period before the beginning of the nineteenth century; the other by M. Pusta who carries the story forward to the present day. Both lecturers deal with the efforts which were made by particular littoral states to exercise control of the Baltic Sea, with the various international conventions which have been concluded from time to time to regulate its use and the status of various islands, cities and straits situated in or upon it or which connect its parts.

As in former recent years, two general courses of 16 lectures each entitled *règles générales du droit de la Paix*, were offered. The lecturer on this subject during the first period of the session was Professor Le Fur, of the University of Paris; for the second period the lecturer was Dr. Erich Kaufmann, professor emeritus of the University of Berlin. Their lectures fill the entire fourth volume (613 pages) of the 1935 *Recueil* and together they constitute a valuable contribution to the literature of international law but which for lack of space cannot be reviewed in detail here. Professor Le Fur divided his course into two parts: the first dealing with theories of international law, the second with the application of the theories. The doctrines examined by him include the monist and dualist theories, the auto-limitation theory, M. Spiropoulos' theory which bases international law on the dominant opinions of jurists, the solidarity theory of M. Duguit (which Le Fur thinks contains a mixture of truth and error), the biological theory of Professor Georges Scelle, Lambert's ideology of a world state (which Le Fur characterizes as a dream), and certain theories of M. Alvarez, notably his doctrine of regionalism in international law. In part two of his course M. Le Fur discusses in turn such matters as "the general principles of law" (Art. 38, paragraph 3, of the Permanent Court Statute), the revision of treaties, the distinction between juridical and non-juridical disputes, the nature of advisory opinions, the sphere of domestic jurisdiction, etc. Throughout, his lectures reveal great learning, familiarity with the literature and a broad grasp of the problems which he discusses.

Professor Kaufman's lectures deal with a greater variety of topics but with less detail. Among them may be mentioned the place of the state in the international system, and its fundamental rights, forms of state and types of unions, the nature of sovereignty, the relation between municipal and international law, the sources of international law, the place of the individual in the international order, the function of law and justice in the international

community, the rôle of moral and social institutions, international courts, judicial and arbitral, and the law which they apply, the structure and organization of the international community and the League of Nations which he evaluates and criticizes. His treatment of the various subjects discussed is characterized by originality and even brilliancy, although his opinions on some of them will not be shared by all jurists.

All in all it seems to the reviewer that the lectures contained in these four volumes come up to a very high standard and as such they constitute a notable contribution to the literature of international law.

JAMES WILFORD GARNER

Briefer Notices

La Società delle Nazioni. By Claudio Baldoni. (Padua: Cedam, 1936. pp. viii, 269. L. 30.) This book presents the preliminary "general part," so frequent in the writings of Continental jurists, of a legal treatise on the League of Nations. After covering the familiar historical ground relating to doctrinal and political precursors of the League idea, and the drafting of the Covenant, Professor Baldoni undertakes an acute legal analysis dealing with the entry into force of the Covenant, its interpretation and amendment, and the legal nature of the League. He concludes that the League is a type of international union, having legal personality in international as well as domestic law. He distinguishes between the date on which the Covenant was "perfected" *inter se* by the ratification of two Allied signatories, and that on which by its own terms the treaty of peace took effect. In the matter of interpreting the Covenant, he holds that "authentic interpretation" can proceed only from the states members of the League, although of course a tribunal might be given express power to lay down general interpretations of a text as well as to render decisions in concrete cases. The meaning of a doubtful provision must be sought in grammar, logic, and the legal system of the League and of general international law of which it is part. Professor Baldoni denies any special virtue to the English text. Where it conflicts with the French version, resort should be had to the Italian text found in the Treaty of St. Germain to ascertain, if possible, the true intent of the framers. He admits recourse to the Preamble, but not to *travaux préparatoires* or analogy. Of special interest is his contention that the Covenant may be amended, not only in the manner prescribed by Article 26, but by the tacit consent of the members. Four such amendments by acquiescence he mentions: the rule that the Assembly need not vote unanimously in proposing amendments to the Covenant; the constitution of the Council without the United States as a member; the desuetude of the provision requiring full and frank interchange of information regarding armaments; and the conclusion of secret military agreements in disregard of the article of the Covenant requiring registration of treaties as a condition of their legal validity. EDWARD DUMBAULD

De Regel "Locus Regit Actum" in het Internationaal Privaatrecht. By Louis Isaak Barmat. (Amsterdam: J. H. de Bussy, 1936. pp. xvi, 396. Index.) The above is a doctor's thesis submitted to the University of Leyden, dealing with the rule *locus regit actum* in private international law, a rule which became established, thanks to the influence of Bartolus, throughout Europe as early as the sixteenth century. As the author points out, the rule arose from a sense of practical necessity, its purpose being to facilitate inter-

national transactions. A foreign merchant residing in Italy and becoming suddenly ill might find it impossible to make a will in accordance with the formal requirements of his native law, but he could call in a notary of the place who would be familiar only with the local law. However, in the course of time, the historical background of the rule became obscured, with the result that the rule *locus regit actum* was frequently regarded as mandatory instead of being merely optional, and as applicable to legal situations which should be controlled by other rules. In order to avoid the confusion thus caused, the author insists throughout the thesis upon the necessity of limiting the rule to its original signification. In the first part of the thesis the author deals with historical and general aspects of the subject, and in the second part, with the application of the rule in the law of persons, things, succession, obligations, and evidence. The author has not overloaded his thesis with a vast number of decisions by the courts of the various countries, but has relied, outside of Holland, largely upon text-writers. He has put to good use the extensive literature on the subject in French, German, and Italian, and shows some familiarity with Anglo-American law. The thesis contains a comprehensive and lucid discussion of the subject, which is both critical and constructive.

ERNEST G. LORENZEN

Justice and Equity in the International Sphere. By Norman Bentwich and others. (London: Constable & Co., 1936. pp. x, 59. 4s.6d.) In this series of interesting essays Dr. Radbruch discusses the international implications of the equity of Roman and of English law; Professor H. A. Smith epitomizes the experience of the Supreme Court of the United States in controversies between States; Judge de Bustamante draws conclusions from the history of the Central American Court of Justice; Dr. Bentwich summarizes the rôle of the Judicial Committee of the Privy Council in intergovernmental questions; while Professor Maclean brings together authoritative Catholic pronouncements on world peace,—"a thing rather of charity than of justice." The writing is succinct and non-technical, well in keeping with the broad educational purposes of the New Commonwealth Society. Impressed by the English experience of a chancery jurisdiction supplementing the common law, the Society has been advocating a new international tribunal rendering determination *ex aequo et bono.* But the net result of this little book is not particularly encouraging to this aspiration. Professor Smith makes it clear that the Supreme Court has not subordinated legal rights to considerations of policy—(though had space permitted, it would have been interesting to point out that the court has laid down some inconsistent, if wise, commerce law in order to prevent one State from securing exclusive enjoyment of its natural resources by legislation obstructing an established interstate current. Pennsylvania *v.* West Virginia, 262 U. S. 553; Foster Packing Co. *v.* Haydel, 278 U. S. 1). And Professor Bentwich shows that while the Judicial Committee has leaned (in Lord Sankey's expression) toward a "large and living interpretation" of the law, its advice is none the less a judgment of law rather than an *ad hoc* solution based on convenience.

CHARLES FAIRMAN

Locarno: A Collection of Documents. Edited by F. J. Berber. Issued under auspices of the German Academy of Political Science, Berlin, and the Institute of International Affairs, Hamburg. Preface by Joachim von Ribbentrop, Ambassador of the German Reich. (London: William Hodge & Co., 1936. pp. xvi, 405. 12s. 6d.) Students who have been impatient to

get at the source materials for studying the denunciation of the Locarno agreements by Germany will welcome this collection of documents by Dr. Berber. Relatively inaccessible German, French, and English diplomatic notes and parliamentary addresses are included, the German being translated. High points are: the editor's attempt to define scientific objectivity in selection of documents (p. xiii), the proclamations concerning German withdrawal from Geneva, rearmament, Hitler's speech of May 21, 1935, the profusion of diplomatic exchange and parliamentary speeches on the events of the denunciation crises, and the final German peace plan of March 31, 1936. Missing is the material showing German insistence on general European disarmament under the Versailles agreement before her withdrawal from Geneva. It might have been useful to present evidence to show either that German consent to treaty arrangements up to 1925 could hardly be said to be free from the pressure of circumstances or else that implied consideration in the Locarno agreements had failed. No indication is given here, either, of which of the treaties printed have been denounced or superseded; several never came into effect. The book seems to be directed particularly to the British audience (see p. xiv), whose attitude was so important to the success of the recent moves. The documents confirm a previous impression of this reviewer: the German legal case seems not to have been adequately formulated as yet, much less adequately presented either to the League of Nations or to the world. A. A. RODEN

La Dottrina Italiana del Diritto Internazionale nel secolo XIX. By Enrico Catellani. (Rome: Anonima Romana Editoriale, 1935. pp. 127. L. 12.) Nobody better than Professor Catellani, who is now considered somewhat as the *paterfamilias* of Italian students of international law, could have presented an essay on the Italian doctrine of international law in the nineteenth century. The author focuses his attention particularly on the principle of nationality which has played such a significant rôle in the elaboration of the Italian doctrine both in the field of public international law and in that of private international law, thereby indeed, constituting the keystone of the "Italian School" of private international law. Emphasis is justly laid on the point that in the conception of Nation, afforded by that doctrine, the most important place is occupied, not by the material element of race, but by the psychological and spiritual agent of national conscience. Other noteworthy contributions of that doctrine on the various items of public international law (organization of international community, subjects of international law, intervention, arbitration, etc.) and of private international law (personal law, nature of the rules of public international law, forms, public order, etc.) are skilfully illustrated. AMOR BAVAJ

A Place in the Sun. By Grover Clark. (New York: Macmillan Co., 1936. pp. xvi, 235. Index. $2.50.) Mr. Clark develops clearly and convincingly the thesis that colonies do not pay either as outlets for population, markets, or sources of raw materials. In the last half century, 19,000,000 people left Europe to reside permanently elsewhere. Of these only 500,000 went to colonies under European control. Meanwhile the population of Europe was increased by 175,000,000. The author's method is mainly statistical, and he has delved deeply in the budgetary and commercial data of numerous countries. He shows that the expenditures for Italian colonies, to take an extreme example, have been much greater than the *total* Italian colonial trade; but commercial profits, at a generous estimate, are only about six per cent of the

trade totals. The thesis that colonies are unprofitable is not new, but it has been given unusually able support in this book. The mandate system, says Mr. Clark, was a step toward avoiding costly colonial rivalry. The next steps, he says, are to strengthen the mandate system and to declare the open door in colonies. Some international authority, such as the League, should be given the power to guarantee the open door. These suggestions are perhaps premature because of the weakness of international organization at the present time. They may find their greatest use when after another war the diplomats meet again to deal with the fragments of Western civilization. Meanwhile the book performs a significant service in striking a heavy blow at the illusion that imperialistic wars are necessary for economic expansion.

BENJAMIN H. WILLIAMS

Le Droit Chinois. By Jean Escarra. (Paris: Recueil Sirey; Peking: Editions Henri Vetch, 1936. pp. xii, 559. Index. Fr. 95; $18 Chinese.) This volume consists of five divisions of Chinese law and its development: firstly, the Chinese conception of law; secondly, the legislative institutions; thirdly, its judicial organization; then the science of law as seen by the Chinese; and, finally, some general conclusions. To these divisions there has been added one of the fullest and most useful bibliographies of the various aspects of the study of Chinese law which in recent times has been compiled. In reading this volume it must be remembered that the author uses the usual French practice of transliteration of Chinese words, so that English and American readers must not look for the Wade system of romanization. It is pleasing to find the development of custom and practice (pp. 426, 428, 444, 462) of Chinese law so carefully brought forward, because Chinese customary law indubitably rests, as did Roman law before the publication of the Twelve Tables, upon *mores majorum*, that is, upon the customs long observed, and by virtue of this long continuance had obtained the sanction of the people. It is from such a view that the principles of the virtue (Hiao), which perhaps in the broadest sense may be taken to include friendship (Hsin), also loyalty (Chung), as well as the fraternal (Yu), and conjugal piety (Shun), had undoubtedly contained the substratum not only of the social but also the legal fabric. Indeed Chinese law, whether customary or statute, tends to furnish collateral evidence of no small importance in support of Maine's suggestion that the movement of progressive societies appears to be from status to contract, that is, from families as units to individuals as units. The author does not appear to be ready to adopt the theory that as each dynasty passed, notwithstanding the dissolution of the government and the abrogation of the existing constitution, which happened so often, the same general conditions and principles were followed not only in the formation or the issuance of new laws, but that each new code made with each new dynasty that had captured the throne, tended finally to confirm the long established customs. This accounts for the Yuan Code, the Manchu Code, the Ming Code. Again, as China was usually conquered by a border state, it would seem that a confirmation of existing custom was not only usual, but easy of acceptance, just as Tartar, Mongol, Manchu, by intermarriage became acquainted with Chinese ideas. This volume undoubtedly should find a place in the colleges where a more exact history of China is required and appreciated. BOYD CARPENTER

Une Nouvelle Théorie Allemande du Droit de la Guerre Maritime. By Georges Gariel. (Paris: Recueil Sirey, 1936. pp. xii, 231. Fr. 35.) The purpose of this interesting and timely book is to refute a monograph by Dr.

Peter Albert Martini entitled *Reformvorschläge zum Seekriegsrecht*, published in Germany in 1933. After pausing in his introduction to deal deftly and succinctly with various arguments that war is outside of law, that the laws of war are always violated, and that the laws of war should receive no further study because war is now outlawed, Dr. Gariel sets forth, with exact citation, the theses of Dr. Martini. In a world war, wrote Martini, no laws of maritime warfare, whether modernized or not, will have a chance; in a war exclusively between small states, all the Great Powers remaining neutral, there is not even the need to modernize the law: it will be scrupulously respected anyway; only in a war in which some of the Great Powers are neutral and others belligerent will a modernization of the laws of maritime warfare be necessary, and this restatement should take place now. This modernization, said Dr. Martini, should proceed along the following lines: The laws of maritime warfare should be adapted to modern naval technique; the requirement of visit and search of merchant vessels should be abolished as being too dangerous and inconvenient for war vessels, submarines and aircraft; belligerent merchant vessels should be allowed to arm, but should be treated as war vessels, and sunk without warning or without providing for the safety of the crews; neutral merchant vessels should not arm, and should be painted with national colors to avoid fraudulent use of flags; neutral merchant vessels should be limited in number and neutral commerce should be limited in amount (by agreements between belligerents and neutrals), any excess to be treated as enemy property; finally, the principle "free ships, free goods" should be invariable. The underlying assumption of Dr. Gariel is that this new theory of the law of maritime warfare is a German scheme to nullify the advantages of naval power, and to permit a country like Germany to avoid the consequences of a blockade, while maintaining free and untrammeled use of submarines and aircraft as commerce destroyers. To close the review with this conclusion, however, would give an unfair notion of Dr. Gariel's monograph. He has written a good book, replete with historical precedent, carefully documented, and, for the most part, carefully reasoned. In the third part of his study, Dr. Gariel presents his own suggestions for adapting the laws of maritime warfare to modern conditions. Let no one think, merely because he deplores war, that the present study of the laws of war is unnecessary.

HERBERT W. BRIGGS

The Banana Empire. A Case Study of Economic Imperialism. By Charles David Kepner, Jr., and Jay Henry Soothill. New York: The Vanguard Press, 1935. pp. xiv, 392. Index. $2.00.

Social Aspects of the Banana Industry. By Charles David Kepner, Jr. New York: Columbia University Press, 1936. pp. 230. Index. $3.00.

The Banana Empire seeks to present a detailed picture of the methods used by the United Fruit Company in expanding its plantations, eliminating competition, and resisting government regulation or increased taxation in several countries of the Caribbean. *Social Aspects of the Banana Industry* goes over much of the same ground but stresses primarily the effect of the Fruit Company's operations on the local community: its relations with smaller planters and with its own laborers and its policies with regard to sanitation, working conditions, and social security.

Both books contain much material which will be useful to the student of Caribbean affairs. It is unfortunate that *The Banana Empire* is so frankly a compilation of accusations with little or no attempt to set forth the other side of the case. At many points in the book the critical reader will feel

convinced that there must be another side, and a reader who knows something of the problem of doing business in Caribbean countries will feel that the authors' indictment of the United Fruit Company, impressive though it is, would be more effective if a number of trivial and partly unjust criticisms were omitted. The book would also be more convincing if Central American newspaper articles and political tracts were less often cited as authorities for statements of fact.

Social Aspects of the Banana Industry is a better balanced and more scholarly piece of work. Though hardly to be regarded as a comprehensive and definitive treatment of its very extensive subject, it is nevertheless a real contribution in a field where too little has thus far been done.

DANA G. MUNRO

De l'Interprétation des Traités Normatifs d'après la Doctrine et la Jurisprudence Internationales. By M. Jokl. (Paris: Pedone, 1936. pp. viii, 194. Fr. 40.) This study, representing the fruits of work under the direction and with the advice of Messrs. Guerrero and Basdevant, will be of interest to American explorers in the field of the interpretation of treaties. The author focuses attention on methods regarded as peculiarly applicable to the interpretation of *Traités Normatifs* in contrast to *Traités-Contrats*. Within the former category she would seemingly place multipartite arrangements of rule-proclaiming aspect, such as the Convention Concerning the Work of Women at Night, concluded at Washington, November 28, 1919. One may fairly enquire whether the character of an international agreement, the objectives which it registers an endeavor to achieve, the number of parties which accept the arrangement, or the method by which it was formulated and submitted for approval, are productive of distinctive processes or rules which the interpreter is bound to respect. The author, after examining the work of the Permanent Court of International Justice, of the Permanent Court of Arbitration at The Hague, and of the *Tribunaux Arbitraux Mixtes*, as well as of certain other tribunals, acknowledges her own sense of respect for the form of a text when it can be regarded as "clear," and, with deference for the views of Vattel, she is inclined under such circumstances to deplore recourse to extrinsic evidence in so far as it may compete with or be contradictory of what the form of a provision may appear to demand. She acknowledges, however, that when, by reason of its form, a text may be regarded as of doubtful significance, recourse may well be had to extrinsic evidence. The author expresses her approval of the opinion of the Permanent Court of International Justice interpretative of the Convention Concerning the Work of Women at Night. (Publications, Permanent Court of International Justice, Series A/B, No. 50, p. 365.) In her bibliography, the author has not felt it necessary to note some recent contributions on the interpretation of treaties, such as those by Chang, 1933, Hudson, 1934, Lauterpacht, 1935, McNair, 1933, and Spencer, 1934; nor has she made reference to the Harvard Draft Convention on The Law of Treaties or to Professor Garner's commentary on Article 19 thereof. Nevertheless, Dr. Jokl's work is entitled to close scrutiny by all who profess interest in the subject with which she deals. CHARLES CHENEY HYDE

Jahrbuch 1935 der Konsularakademie zu Wien. (Vienna: Verlag der Konsularakademie, 1935. pp. 151.) This is the Annual Report for the year 1935 of the Vienna Consular Academy, an institution founded by Maria Theresa in 1754 and reorganized after the World War. Its purpose is to prepare for the diplomatic and consular service; it is open to students of all nations. The

report gives all statistical and administrative data and a full survey of the plan of studies, which include particularly international law, conflict of laws, consular practice, diplomatic history, political science, economics, science of finance, commercial fields of study, German, English and French. The students may further study Italian, Spanish, the Slav and Oriental languages. The report shows that this old institution attracts students from many countries and is doing splendid work. By publishing also the problems, submitted for written examinations, discussions in seminars, papers prepared by students and some addresses delivered at the Consular Academy, this volume by far transcends the narrow limits of a purely administrative report.

JOSEF L. KUNZ

Maritime Neutrality to 1780. By Carl J. Kulsrud. (Boston: Little, Brown & Co., 1936. pp. x, 351. Index. $3.50.) This volume is the outcome of Dr. Kulsrud's doctoral dissertation. It deals in seven chapters with prize law, the rule of war of 1756, the doctrine of free ships, free goods, the right of visit and search, blockade, contraband, and armed neutralities to 1780. The last chapter is a reprint of an article by the same author which appeared in the July, 1935, number of this JOURNAL. The greatest value of the volume lies in the readability which the author has achieved while dealing with a very technical and difficult subject. The perspectives are good and the relationships of events and laws are well handled. Dr. Kulsrud's thesis is that neutrality regulations and laws have been adopted to release neutral trade and commerce in wartime from severe restrictions. His point is that every regulation concerning contraband, for instance, is drawn up to liberate neutral trade by setting bounds to the fields within which belligerents are entitled to operate. This interpretation should be most heartening to the disciples of peace. Similarly the rule of war of 1756 is shown to have been a logical corollary to principles followed prior to its adoption. Dr. Kulsrud might have added considerable historical detail to advantage. Likewise he might have presented a stronger case for the neutrals. In some instances, there seems to be insufficient footnote reference. In one or two instances there is unnecessary repetition, and upon occasion the author generalizes more than the facts which he has established justify. On the whole, the work is a very creditable performance and is a valuable addition to reading shelves on diplomatic history and international law.

KALIJARVI

Fifth Report on Progress in Manchuria to 1936. (Dairen: The South Manchuria Railway Co., July, 1936. pp. xii, 253. Index.) This Report, like its predecessors, will be welcomed by students of Far Eastern affairs. Its contents include a short chapter on political developments, followed by a more extended treatment of finance, construction, transportation and foreign trade in the State of Manchoukuo and the Japanese railway zone. The statistical material, which is abundant, is of great value, as are also the maps, which cover politics, railroads and industry. The large section devoted to documents includes such items as the Manchoukuo oil monopoly law and papers relating to the transfer of the former Chinese Eastern Railroad. The Report is compiled by Roy H. Akagi, well known to many American students.

PAUL H. CLYDE

Die politischen Streitigkeiten im Völkerrecht. By Onno Oncken. (Berlin: Verlag für Staatswissenschaften und Geschichte, 1936. pp. viii, 64. Rm. 4.40.) In this brief but good study the author shows that there is no

juridical foundation for the well-known and controversial distinction of "legal" and "political," of "justiciable" and "non-justiciable" international conflicts. Such conflicts are simply "political" because of the refusal of the states to submit them to an international court. The policy of reservations, of a particular *compromis* in every single case, even in permanent arbitration treaties, even in the Optional Clause of the Statute of the Permanent Court of International Justice, is not a consequence of the fact that certain conflicts are non-justiciable "by their nature," but of the wish of the Powers to have in some instances, especially in the important conflicts, resort to force rather than law, to the "reason of the state" rather than to international law. Instead of recognizing this situation, the science of international law has tried to define theoretically a group of "political" conflicts, thereby not fulfilling a scientific task, but merely rationalizing a questionable practice and giving new aid and a "scientific" justification to this very practice. The study therefore follows the lines of H. Lauterpacht's great work, in which this author has, against any challenge on much broader lines and in a more far-reaching way, shown that this is so. JOSEF L. KUNZ

Pre-War Years 1913–1917. American Democracy and the World War. By Frederic L. Paxson. (Boston: Houghton Mifflin Co., 1936. pp. xii, 427. Index. $3.75.) This volume, which the publishers announce as the beginning of a history of American Democracy and the Great War in all its phases, opens with a study of the problems which confronted President Wilson when he assumed his duties in 1913. It sets forth the legislative program by which he intended to meet those problems and shows its interruption by the shock of war in Europe. From that time the more serious problems were those of neutral duties and neutral rights. Both belligerents disregarded the rights of neutrals as established by international law, as Professor Paxson very fairly points out, but since England controlled the sea while German cruisers were held in German ports, it was British interference with American trade that was most seriously felt. In fact, in 1916, as Professor Paxson reminds us, "it was war with England rather than with Germany that Wilson feared might follow the period of neutrality." The author carefully follows the controversies with Great Britain over the enlargement of the list of contraband, over interference with our trade with Germany's neutral neighbors, over the "black list" which forbade British subjects to trade with certain American firms. He does not neglect the progress of events in America: the demand for preparedness, the troublesome labor questions, the Mexican situation, but the problem of our neutral rights was dominant. Wilson's efforts for peace, the refusal of both belligerents, the resumption of "unlimited submarine warfare" which precipitated American entrance into the war, are all discussed with fullness sufficient to bring out the facts and to show why the American people at that time supported the President in his demand for a declaration of war against Germany. H. W. TEMPLE

Les Relations des États de l'Amérique Latine avec la Société des Nations. By Manuel Pérez-Guerrero. (Paris: A. Pedone, 1936. pp. xii, 220. Fr. 30.) This book comes at a most opportune time. When the European nations tremble before the specter of war, the states of the Western Hemisphere assemble in Buenos Aires to consider ways and means of consolidating peace. When the League of Nations traverses the most serious crisis of its existence, Pan American solidarity makes itself more evident. All of the Latin American States have at some time or other been members of the League. All

except Brazil, Costa Rica and Paraguay are members at present. Dr. Pérez-Guerrero has conscientiously and painstakingly studied all the facts bearing on the relations between the League and the Republics of the New World. The salient fact of American participation in the activities of the League is the strong regionalism and the spirit of solidarity which characterizes the course of action of the Latin American group, by which it has become a force which has to be reckoned with at Geneva, notwithstanding the undeniably "limited interest" of the Latin American nations in the affairs of the other continents. Most pertinent data have been collected by the author with regards to admissions and withdrawals of American states; their representation in the different organs of the League; their coöperation in its international functioning, and the pacificatory work of the League in extra-American and inter-American conflicts. Facts are envisaged and analyzed in a scholarly and judicious manner, and the book is a valuable summary of the matters covered by its title. RICARDO J. ALFARO

Die Öesterreichische Völkerbundanleihe. By Arpad Plesch and Martin Domke. (Zurich: Polygraphischer Verlag, 1936. pp. 143. Fr. 3.50.) The authors of this monograph have written extensively upon the effect of gold-clause legislation upon international loans both public and private. The present monograph deals with the Austrian loan of 1923 issued under the auspices of the League of Nations and guaranteed in certain proportions by eight member-states of the League of Nations. Only the participation taken in the United States contained a gold clause. The loan was called for payment as of June 1, 1935. The Austrian Government refused to pay the coupons coming due after June 5, 1933, the date of the Joint Resolution of Congress, in any other value but the equivalent of paper dollars and adopted the same mode of payment with regard to the principal. The bonds placed in the United States were payable "in gold coin of the United States of America of the standard of weight and fineness existing on June 1, 1923." The authors argue that this is a gold-value clause both under the law of Austria and the law of the guarantors; that the American participation bonds although payable in New York are not subject to American law; that the counter-signature for identification which was made in New York did not make the loan a New York contract; that on the contrary, the contract was an Austrian contract, by reason of which Austrian law should apply. An alternative argument is also presented to the effect that even if American law is applicable, it should be the law existing at the time the contract was executed. The second part of the brief deals with the question of the obligation of the trustees toward the guarantors in view of the dispute which has arisen with regard to the amount due under the obligation by the principal debtor. The authors present an interesting problem in international loans and have called to their aid the authorities of many countries in presenting their point of view. The problem presents a practical study both in private international law and in the comparative law of contracts.

ARTHUR K. KUHN

L'Empire Fasciste: Les origines, les tendances et les institutions de la dictature et du corporatisme italiens. By Marcel Prélot. (Paris: Recueil Sirey, 1936. pp. xii, 258. Fr. 24.) Amidst the plethora of works on Fascism, this brief study is outstanding by reason of its lucidity and moderation. Even the advanced student of Fascist thought and institutions, who will find little that is new in the factual material presented by the writer, will draw

profit from this logical and orderly development of a confused subject. The value of the study would have been enhanced by the inclusion of a section dealing with the implications of Fascist doctrines in the fields of international relations and international law. L. PREUSS

Supplement to the Law and Procedure of International Tribunals. By Jackson H. Ralston. (Stanford University: Stanford University Press, 1936. pp. xx, 231. Index. $4.00.) In this volume, Judge Ralston brings "as nearly up to date as may be" the valuable earlier volume (revised 1926), in which he had summarized international law as administered by international tribunals. As he remarks in his Introduction, much work has been done in the field of international arbitration during these ten years; and this work he has covered with thoroughness in the present volume, as his citations evidence. As in the previous volume, materials are collected under various headings of international law and procedure, such as Rights and Privileges of Aliens, Attributes and Limitations of Sovereignty, Damages; or, Parties, Evidence, Commissions. The paragraphing is conveniently repeated, with new material added to each paragraph (and indeed to almost every paragraph), under lettered subheadings. Quotations are given from dissenting as well as from majority opinions. In some places, decisions of an earlier period are inserted. These books are indispensable to international lawyers, and beyond price, one would think, to an arbitrator.

As usual, Judge Ralston rarely interjects his own opinions, though occasionally he questions a judgment. An exception to this policy is his contribution to the problem of "denial of justice," now widely in debate. This term, he thinks, is only called into play "when the property or the life and liberties of the complainant are directly affected by the action of the government or of those for whom the government is to be held responsible." He regards as contradictory the award of punitive damages to an alien because the government has failed properly to punish those who injured him. Why should a claimant receive the punitive damages? As yet, he observes, the foundations of such demands have received no systematic examination.

CLYDE EAGLETON

Le Problème des Passeports. By Egidio Reale. (Paris: Recueil Sirey, 1935. pp. 104. Bibliography.) This monograph, issued under the auspices of the Academy of International Law, is a study of the extensive, and, as the author holds, unduly burdensome passport restrictions in effect in all civilized countries at the present time. It is a concise, logically arranged and thorough study of an important and significant feature of modern international relations. The first two chapters trace the development of the passport system from early times. As the author points out, in the period immediately preceding the outbreak of the World War, passports were required in only a few countries, including Russia. The extensive modern system was established as an incident of the war and later kept alive and greatly extended as a result of the general debacle caused by the war, and the resulting rivalry, jealousy and distrust among nations. Especial attention is devoted to the painstaking and persistent efforts of the League of Nations to alleviate the burdens imposed by passport restrictions upon persons of certain classes, especially emigrants, stateless persons and those denied protection by the states to which they belong, including Russian, Armenian and German refugees. In this relation the history of the Nansen certificates is set forth. In the concluding chapter the author expresses the hope that "the day is near at hand when

states, realizing at last the importance that increase in relations and facility of communications have in the life of peoples and in a perfect international organization, will renounce the continuance of a régime which constitutes a striking anachronism" (p. 98). The author has viewed the passport system, of which visas are an incident, principally as it exists in Europe. He does not discuss the visa system as extended, with modifications and additions, in the United States under the Quota Act of 1924, to the control of immigration. Perhaps, if he had made a study of this excellent measure which has made the control of immigration more humane as well as more thorough, he might have concluded that, after all, one good thing has come out of the visa system.

R. W. FLOURNOY

The Future of the League of Nations. The record of discussions held at Chatham House. The Royal Institute of International Affairs. New York: Oxford University Press, 1936. pp. 188. $1.00.

Sanctions Begone! A Plea and a Plan for a Reform of the League. By H. Rowan-Robinson. London: William Clowes & Sons, 1936. pp. x, 244. Index. 7s. 6d.

The volume entitled *The Future of the League of Nations* contains a record of the discussions of a group appointed by the Council of the Royal Institute of International Affairs to study the future of the League and the possible revision of the Covenant. The discussions were led by Professor Arnold J. Toynbee, Sir Norman Angell, Sir Arthur Salter, Mr. G. M. Gathorne-Hardy, Hon. Harold Nicolson, and Sir John Fischer Williams. Mr. H. G. Wells took a prominent part in the deliberations. The discussion on "Nature and Paramount Aim of the League of Nations" was led by Professor Toynbee, who posed the two leading questions: "What is the League?" and "What, in international life, is our paramount aim?" He gives ample evidence tending to show that the League means different things to Germans, Englishmen, experts, laymen, and others. As to the second question, he states that the paramount aim is not peace or parochial sovereignty, but "the establishment of a reign of law and order in international affairs, such as we try to get in our social relations when they happen to lie inside national frontiers." This aim involves peaceful change and sacrifices.

Sir Norman Angell led the discussion on the topic, "Is the League in a position to create peace if it is not in a position to enforce peace?" He believes that unless the League engages in collective action on common rules of conduct, it will not measure up to its possibilities. He would "recreate the real League of Nations" by making the "League really and truly an instrument of mutual defence." Sir Arthur Salter led the discussions on "Practical Suggestions for Reform." A choice bit of the proceedings comes from Sir Arthur's reference to Article 11 of the Covenant. "If countries really mean business they can act without any actual change in Article 11. There is nothing to prevent countries which have come to a decision as to what is to be done in a particular case from putting that decision into effect because one or two dissentients stand out. They can act as if that decision had been a formal and legal one under Article 11. (*At this point Sir John Fischer Williams indicated agreement.*) I am glad to see that Sir John agrees with me." Sir Arthur believes that Article 19 is not efficacious and offers a plan to make it work better. He would have the League recommend desirable changes in the *status quo*, and nations that refused to give effect to these recommendations would be deprived of their right to protection under the Covenant against a resulting war.

Discussion on the question "Should the membership and obligations of the League be extended or restricted?" was led by Mr. G. M. Gathorne-Hardy, while Hon. Harold Nicolson opened the discussion on "British policy in relation to the League." A feature of the volume is the written comment on the group discussions by various individuals. An Appendix carries "Suggestions for the Re-drafting of Certain Articles of the League Covenant" with explanatory notes and comment by Mr. Gathorne-Hardy; this is his work individually, but there is a commentary by Sir John Fischer Williams.

The volume contains a great deal of useful material especially reflecting viewpoints of leaders of the British Commonwealth. The reader must consult the book to appreciate the contents.

In *Sanctions Begone!* Mr. H. Rowan-Robinson presents his case against sanctions. In ten chapters he discusses the history of the League, its aims, weaknesses and handicaps, disarmament, the Abyssinian dispute, the United States and the League, sanctity of treaties, collective security, colonies and raw materials, an international police force, the Paris (Hoare-Laval) proposals, and the future of the League. In a preface, the author pleads for a fresh consideration of the peace proposals made by Chancellor Hitler in May, 1935. In a "List of Works Consulted" it appears that only English publications and English writers were relied upon. There is a conspicuous omission of publications of the New Commonwealth group (English) which certainly has not associated itself with proposals for the elimination of sanctions. French writers are completely ignored, and one notices that of the two American writers who are referred to, the author consulted and quoted the late Frank H. Simonds, whose predilections against the League of Nations are well known to American students. Mention is made of the "havoc wrought by the refusal of the United States to form part of the League . . ." and the writer believes that the elimination of sanctions will pave the way for entrance into the League of the United States, Germany, and Japan. His statement that the United States "imposed" on the "world the Kellogg Pact—vague, premature, unsupported—[and this] had the effect of discrediting the peace movement and devaluating pledges in general" is truly astonishing in view of the fact that the Pact has been regularly ratified by nearly every State in the world.

Appendices carry Schemes X and Y which embody the author's proposals for changes in the League Covenant. Scheme X would modify the present Article 16, and Scheme Y would eliminate Article 16 entirely. Appendix F carries the text of the Hoare-Laval proposals regarding Ethiopia.

The author presents his case against sanctions, but the case is greatly weakened by a failure to pay due attention to the pro-sanctions countries and authorities, and by unwarranted conclusions drawn from the attempt to use sanctions in the Italo-Ethiopian trouble under conditions that made a real test of scientifically applied sanctions practically impossible.

J. EUGENE HARLEY

Die Diplomatische Vorgeschichte des Chaco-Konflikts. By Hans Sandelmann. (Leyden: A. W. Sijthoff, 1936. pp. x, 300. Indices. Bibliography. Maps.) Dr. Sandelmann's Diplomatic History of the Chaco conflict is indeed a thorough study of the backgrounds of this most persevering of all international controversies of Latin America. The book starts with the 18th century titles to the disputed area and comes down to the most recent attempts at a solution. As books on diplomatic history go, this volume is rather difficult reading: it does not confine itself to an objective recital of events, but

interjects deep-going analysis and interpretation. The reviewer believes that this method renders the book an even more valuable work of reference, if placed in the hands of a mature student. The qualities of an excellent reference work are further enhanced by a collection of fifteen maps of the disputed area showing the various solutions adopted or suggested, by a chronological table, by a good bibliography, and by a general and a geographical index. The author manages to keep what appears to the reviewer a fair balance between the various elements involved in the conflict: national pride, striving for mineral deposits, legal argumentation, and diplomatic considerations proper. While the volume, in accordance with its title and character, is predominantly a study of diplomatic history, with juristic argumentation a close second as far as the number of pages is concerned, there is no undue exaggeration or minimizing of any single one of the elements involved. Coming from a European jurist, it is especially interesting to note that, despite the very thorough analysis of legal principles, the author is not induced to press for a solution in accordance with some hard and fast formula of strict law and that he fully appreciates the importance of applying the flexible methods of conciliation in this connection. BENJAMIN AKZIN

Théorie Juridique de la Révision des Traités. By Georges Scelle. (Paris: Recueil Sirey, 1936. pp. 97. Fr. 10.) The author considers the problem of treaty revision as primarily that of revising the international political and territorial statute, as this is the most difficult and the most threatening to peace. Rejecting as too narrow the theory of treaties as contracts, he treats them rather as legislation, viable so long as they conform to the social needs of the international community. In the national field the legislative authorities ordinarily determine when social needs require statutory changes, and make the changes. Postponement may result in revision by another process, namely, revolution. Internationally, competence lies with the League of Nations Assembly to recognize the need for, and to recommend, changes in treaties not conforming to the needs of society. As this is legislative action, it may be taken by qualified majority, as was intended by the framers of the Covenant. The parties as the competent authorities may then revise the treaty which fails to correspond to this norm. Failure of the parties to act is the sole ground for denunciation. Duress is assimilated to submission by a legislative minority to a majority, with the minority free to seek legislative reversal. Change of conditions produces no effect unless the new conditions are out of concordance with the social needs of the international community. Interpretation of social necessity as a norm must present many new difficulties. However, acceptance of the author's thesis would restore Article XIX to its original importance and greatly increase the importance of the League Assembly, without involving amendment to the Covenant.

HAROLD J. TOBIN

Government Publications and Their Use. By L. F. Schmeckebier. (Washington: Brookings Institution, 1936. pp. xiv, 446. Index. $3.00.) A comprehensive description of the publishing results of the many branches of the United States Government is presented in this compact volume for the special use of librarians and students. The author's purpose of explaining the present organization of each general field of publication, with adequate reference to the origins of and authorizations for the several groups, affords the user of the volume a clear picture of where to find the material he is looking for. Readers of the JOURNAL will find the chapter on "Foreign Affairs"

informing and time-saving. The manual is of special utility in providing coördinated information respecting catalogs, indexes, bibliographies, Congressional, presidential and other publications which the student of foreign relations also needs to consult. DENYS P. MYERS

Government and Politics Abroad. By Henry Russell Spencer. (New York: Henry Holt & Co., 1936. pp. viii, 558. Index. $3.50.) Professor Spencer earned a very considerable reputation as the author of *Government and Politics of Italy* (1932), which reputation we fear will not be enhanced by the present volume which, as the author acknowledges, presents "much controverted matter in somewhat dogmatic tone," simply because it tries to cover too much—Britain (Kingdom, Empire and Commonwealth), France, Soviet Russia, Italy, Germany, Switzerland, North European States, Succession States, Latin America, Japan, and International. An example of oversimplification is the brief space—twelve lines—devoted to Bulgaria (p. 453), wherein the author claims that that country "has today the most nearly normal condition of all the states in this region [the Balkans], the least revolutionary disturbance to react from or assimilate." This simply does not correspond to the violences connected with the Stambuliski Government or the present Fascist régime. Several other parts of the book show similar misjudgment of facts. On the other hand, the book will be found interesting despite inept handling. All in all, the book will interest most the readers who like to have their opinions confirmed without much sustained demand upon their critical and factual knowledge. JOSEPH S. ROUCEK

Political and Diplomatic History of Russia. By George Vernadsky. (Boston: Little, Brown & Co., 1936. pp. xii, 499. Maps. Index. $4.00.) To write a comprehensive history of a nation is always a laborious task. It is especially difficult when the country in question embraces one sixth of the earth's surface and when the time to be covered runs to the imposing figure of fifteen hundred years. If such a history is to be compacted into a single volume of five hundred pages, the undertaking becomes a venture, its achievement a triumph. Mr. Vernadsky has written such a book. As a chronicle attempting to give a brief yet "reliable account of the most important developments in Russian history" (p. v), the book fulfills its purpose admirably. Free from political bias, brief and clear in form, and scholarly in treatment, it furnishes pleasant and instructive reading for the general public, while at the same time providing an indispensable reference book for students of Russian history. To the former it presents a vivid picture of the transformation of the Western Eurasia of the fifth century into the Soviet Empire of today. For the latter it provides a clear-cut outline of the events without omitting any of the essential details which might afford additional data for those willing to undertake a deeper analysis of that intricate transformation. Outstanding in this respect is the attention which the author has given to the history of the Ukraine and White Russia, the importance of which has been sadly underestimated hitherto. As an attempt to "emphasize a certain fundamental unity of the Russian historical process which makes the present-day Russian policies only the continuation of age-long development" (p. v), the book is likewise a welcome addition to the English literature on Russia. Those inclined to be precise may rightly voice criticism that the mere thirty pages devoted to the Soviet period are not sufficient to prove such unity, and that more emphasis should have been laid on such aspects of Russia's past as the treatment of nationalities, problems of labor and industry, public instruc-

tion and civic liberties in general. For those willing to accept "unity" in a much wider sense of the term, however, the book is a convincing testimony that this unity is to be sought not so much in the pragmatics of political events as in the natural conflict between the dictates of Western civilization and the Oriental peculiarities of Russian impulses, which makes Russian history always intricate, often paradoxical, and never lacking proof that greatness has been consistently Russia's aim. An extensive bibliography, a chronological list of rulers, genealogical tables and a well-composed index add to the usefulness of the book. This contribution of Mr. Vernadsky justifies the hope that there may soon appear a chronicle devoted to the similarly intricate, not less paradoxical, and likewise persistent political and diplomatic past of Soviet Russia. T. A. TARACOUZIO

Der Kampf um die Reform des Völkerbundes 1920–1934. By Hans Wehberg. (Geneva: Union A. G., 1934. pp. ii, 33.) This study starts with a short discussion of the legal meaning of Article XXVI of the Covenant providing for amendment, its procedure and interpretation. The principal part is devoted to a survey of the efforts made from 1920–1934 to amend the Covenant, and the meager results. The difficulty, if not the impossibility, of amendment was soon realized, after a first period which lasted from 1920–1922; later the development was tried, not by means of amendments, but by "interpretative resolutions" and special treaties, such as the proposed "Geneva Protocol" of 1924. All radical proposals of amendment, such as put forward early by Argentina and Canada, were discarded and the effort of bringing the Covenant into harmony with the Pact of Paris failed. This survey ends with Mussolini's demand for League reform 1933 (strengthening of Article XIX, dominating position for the Great Powers). In more recent times, and in consequence of the failure of the League in the Ethiopian case, reform of the Covenant is again much in the foreground. But in view of the existence of two completely antagonistic schools of thought, it remains to be seen whether the present movement for reform of the Covenant will have any result. After all, the fault of the League's failures is not with the Covenant, but with the nations, members and non-members of the League. JOSEF L. KUNZ

Documents on International Affairs 1935. Vol. I. Edited by John W. Wheeler-Bennett and Stephen Heald. (New York: Oxford University Press; London: Humphrey Milford, 1936. pp. xii, 318. $6.00.) As Mr. Heald points out in the preface to this volume, the year 1935, with the possible exception of 1931, was the most significant since the war. It seems natural, therefore, that the international documents for that period should be numerous and bulky. A division was inevitable, and Mr. Heald has hit on the happy idea of including within this first volume all those dealing with Germany and Europe, and has reserved the full documentation of the Italo-Abyssinian affair for the second. The present volume begins with the Rome agreements of January, 1935; goes on to the Franco-British conversations of February; the statements of British and French defence policies; the German denunciation of Part V (the Disarmament sections) of the Treaty of Versailles; the visits of the British Ministers to Berlin, Moscow, Warsaw and Prague; the Stresa Conference; the Extraordinary Session of the League Council of April; the Franco-Soviet and Czechoslovak-Soviet agreements; the Anglo-German Naval Agreement; declarations of foreign policy; an Addendum on the Eastern European Pact and the Franco-Soviet Pact; and an Appendix giving a chronology of treaties. Practically every one of the

events which these documents chronicle has left a deep impression on Europe and the world, but interestingly enough, as with the 1934 Documents, which made no mention of Abyssinia, soon to become the focal point of international interest, so the present volume makes no mention of Spain which, a few months after its publication, was to bring and hold all Europe on the brink of the abyss. This volume is, as usual, indispensable to students of international affairs, and Mr. Heald, who, in the absence of Mr. Wheeler-Bennett, had to discharge his task single-handed, is to be congratulated on his work. At the same time the absence of any materials from the Americas and Far East (with the exception of some reference to the neutrality policy of the United States) suggests not only that these parts of the world are less important internationally or at least less active (which is true) but that the Documents cater primarily to an English and European audience.

NORMAN MACKENZIE

The League of Nations and the Rule of Law, 1918–1935. By Alfred Zimmern. (London and New York: Macmillan Co., 1936. pp. xii, 527. Index. $4.00; 12s. 6d.) Sir Alfred Zimmern's book deals with the machinery which has been contrived to try to keep the peace and assure orderly development in our world of sovereign states, necessarily bound together by their common interests, commercial, philanthropic, political. He studies not only the Holy Alliance, the Concert of Europe, international unions for specific non-political purposes, the Allied war organization and the League of Nations, but also the ideas fathered by various groups and individuals for the creation of a more perfect commonwealth of nations. He concludes that progress has been limited to a better machinery for coöperation between the nations and has not gone so far as to assure the rule of law, because of the unwillingness of the states to compel its observance or enforce decisions reached by a properly constituted international body such as the Assembly of the League, which is "the first outward and visible manifestation of the authority of the Rule of Law in the world" (p. 467). Apparently accepting the Austinian theory of law, the author doubts whether international law will qualify as law. His doubt is justified if it be agreed that international law is found "in a succession of treatises extending over some three or more centuries" (p. 97), but will not impress lawyers who believe that the rules of law are those which are applied in the day-to-day relations of nations, even if they agree that in great crises where vital economic or political questions are involved, the Great Powers, as Sir Alfred shows, have been inclined to throw the sword into the balance of Justice. Sir Alfred's doubts are supported in his mind by the fact that international law writers from Grotius' time have devoted so much space to war, which marks the passage from settlement by law to settlement by force. To the reviewer it seems but natural that in the seventeenth and eighteenth centuries, when there was war almost constantly in some part of Europe, so that states were nearly continuously either belligerent or neutral, both governments and lawyers would be concerned with the rules governing the state of war, especially to make possible trade and political relations in a war-torn society of nations. More recent authors have devoted the larger portions of their work to the law of peace, as, for example, Professor Hyde, in a book of 1690 pages, allots but 671 to the law of war. Far more impressive, however, is the fact that in Judge John Bassett Moore's *Digest of International Law*, based on the law as applied by the United States Government, out of 28 chapters only six deal with the law of war. J. P. CHAMBERLAIN

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